

EXHIBIT 7

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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HAPAG-LLOYD AKTIENGESELLSCHAFT,

Plaintiff,

-against-

Case No.
14-cv-9949 (VEC)

U.S. OIL TRADING LLC, O.W. BUNKER
GERMANY GMBH, O.W. BUNKER & TRADING
A/S, ING BANK N.V., CREDIT AGRICOLE
S.A.,

Defendants.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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HAPAG-LLOYD AKTIENGESELLSCHAFT,

Plaintiff,

-against-

Case No.
14-cv-10027 (VEC)

O'ROURKE MARINE SERVICES, L.P.,
L.L.P., O.W. BUNKER GERMANY GMBH,
O.W. BUNKER USA, INC., ING BANK N.V.,

Defendants.

-----x

January 19, 2016
10:05 a.m.

DEPOSITION of RULE 30(b)(6) WITNESS

NORBERT KOCK

Page 2	Page 4
<p>1 UNITED STATES DISTRICT COURT 2 SOUTHERN DISTRICT OF NEW YORK 3 -----X 4 U.S. OIL TRADING LLC, 5 Plaintiff, 6 Case No. 7 -against- 15-cv-6718 (VEC) 8 9 M/V VIENNA EXPRESS, her tackle, 10 boilers, apparel, furniture, 11 engines, appurtenances, etc., 12 in rem: M/V SOFIA EXPRESS, her 13 tackle, boilers, apparel, furniture, 14 engines, appurtenances, etc., in rem, 15 Defendants. 16 -----X 17 HAPAG-LLOYD AKTIENGESELLSCHAFT, as 18 Claimant to the M/V VIENNA EXPRESS, 19 Counter-Claimant and 20 Third-Party Plaintiff, 21 22 - against - 23 U.S. OIL TRADING LLC, 24 Counter-Defendant and 25 26 O.W. BUNKER GERMANY GMBH, O.W. BUNKER 27 & TRADING A/S, ING BANK N.V., and CREDIT 28 AGRICOLE CORPORATE AND INVESTMENT BANK 29 a division or arm of CREDIT AGRICOLE S.A., 30 Third-Party Defendant. 31 -----X 32 33 Deposition of Rule 30(b)(6) Witness, 34 NORBERT KOCK, pursuant to Notice, held at the 35 offices of Freehill Hogan & Mahar LLP, 80 Pine 36 Street, New York, New York, before Roberta 37 Caiola, a Shorthand Reporter and Notary Public 38 within and for the State of New York.</p>	<p>1 A P P E A R A N C E S: 2 3 Attorneys for U.S. Oil Trading LLC: 4 CLYDE & CO. US LLP 5 405 Lexington Avenue 6 New York, New York 10174 7 BY: CASEY BURLAGE, ESQ. 8 AND: JOHN KEOUGH, ESQ. 9 10 Attorneys for O.W. Bunker Germany GMBH: 11 HILL RIVKINS LLP 12 45 Broadway, Suite 1500 13 New York, New York 10006-3739 14 BY: JUSTIN M. HEILIG, ESQ. 15 16 Attorneys for O'Rourke Marine Services L.P.: 17 SIMMS SHOWERS LLP 18 201 International Circle, Suite 250 19 Hunt Valley, Maryland 21030 20 BY: CASEY L. BRYANT, ESQ. 21 (Appearing Telephonically) 22 23 ALSO PRESENT: 24 Andrew Rona, The Interpreter 25</p>
Page 3	Page 5
<p>1 A P P E A R A N C E S: 2 3 Attorneys for Defendant ING Bank N.V., 4 as Security Agent: 5 SEWARD & KISSEL LLP 6 One Battery Park Plaza 7 New York, New York 10004 8 BY: BRIAN P. MALONEY, ESQ. 9 AND: MICHAEL W. BROZ, ESQ. 10 11 12 Attorneys for Hapag-Lloyd Aktiengesellschaft: 13 FREEHILL HOGAN & MAHAR LLP 14 80 Pine Street 15 New York, New York 10005 16 BY: MICHAEL FERNANDEZ, ESQ. 17 AND: MICHAEL DEHART, ESQ. 18 19 20 21 22 23 24 25</p>	<p>1 INDEX 2 Witness Examination By Page 3 Norbert Kock Mr. Maloney 12 4 Mr. Heilig 120 5 Mr. Keough 165 6 Ms. Bryant 216 7 Mr. Maloney 220 8 9 E X H I B I T S 10 Kock Description Page 11 Exhibit 1 Notice of Rule 30(b)(6) 12 12 Deposition 13 Exhibit 2 Notice of Rule 30(b)(6) 12 14 Deposition 15 Exhibit 3 Document Bates stamped USOT 24 16 000101 through USOT 107 17 Exhibit 4 Document Bates stamped 41 18 HPL-USOT page 131 19 Exhibit 5 Document Bates stamped 43 20 HPL-USOT 135 and HPL-USOT 136 21 Exhibit 6 Document Bates stamped 49 22 HPL-USOT 137 and HPL-USOT 138 23 Exhibit 7 Document Bates stamped 50 24 HPL-USOT 139 and HPL-USOT 140 25</p>

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<p style="text-align: right;">Page 14</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 interpreter here today and we'll do that. Does</p> <p>3 that make sense?</p> <p>4 A. That makes sense.</p> <p>5 MR. FERNANDEZ: Brian, at the</p> <p>6 beginning, are we reserving all objections but</p> <p>7 for form and foundation, federal stipulations or usual</p> <p>8 stipulations?</p> <p>9 MR. KEOUGH: That's fine with me.</p> <p>10 The witness will sign before any notary if he so</p> <p>11 chooses.</p> <p>12 MR. MALONEY: Okay.</p> <p>13 Q. By whom are you employed?</p> <p>14 A. I'm employed by Hapag-Lloyd AG in</p> <p>15 Hamburg.</p> <p>16 Q. That's the entity that's the named</p> <p>17 party in this case?</p> <p>18 A. Yes.</p> <p>19 Q. Are there any other parent</p> <p>20 companies or subsidiaries that you're employed</p> <p>21 by?</p> <p>22 A. No.</p> <p>23 Q. What's your title?</p> <p>24 A. My title is Director of Purchasing</p> <p>25 and Supply.</p>	<p style="text-align: right;">Page 16</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 I'll ask you to take a look at the</p> <p>3 documents that we've marked as Exhibits 1 and 2?</p> <p>4 MR. FERNANDEZ: Are there extra</p> <p>5 copies, Brian?</p> <p>6 MR. MALONEY: Absolutely. So</p> <p>7 Exhibit 1 for the record is the Notice of</p> <p>8 Deposition in case number 14-cv-9949, which is</p> <p>9 Hapag-Lloyd against U.S. Oil Trading and others.</p> <p>10 Exhibit Number 2 is 14 CV 10027, Hapag-Lloyd</p> <p>11 against O'Rourke Marine Services, and others.</p> <p>12 Q. Sir, have you seen these documents</p> <p>13 before?</p> <p>14 A. No.</p> <p>15 Q. What did you do to prepare for</p> <p>16 today's deposition?</p> <p>17 A. For today's preparation we had a</p> <p>18 brief meeting yesterday, because I've never been</p> <p>19 part of such a deposition neither here nor</p> <p>20 Germany, nor anywhere else in the world, and the</p> <p>21 gentlemen explained to me a bit about the</p> <p>22 procedure here and what it is all about.</p> <p>23 Q. Could you turn to page 3 of the</p> <p>24 document that we've marked as Exhibit 1. Have</p> <p>25 you seen any of these topics before here on page</p>
<p style="text-align: right;">Page 15</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 Q. What are your job responsibilities</p> <p>3 as the director of purchasing and supply?</p> <p>4 A. I am responsible for providing the</p> <p>5 fleet of Hapag-Lloyd's owned and chartered</p> <p>6 containers with fuel oil and lubricants, and</p> <p>7 some selected chemicals, marine chemicals</p> <p>8 worldwide.</p> <p>9 Q. You mentioned that Hapag-Lloyd has</p> <p>10 a fleet. Does it own many vessels?</p> <p>11 A. Hapag-Lloyd owns a good number of</p> <p>12 vessels, but also chartered a good number of</p> <p>13 vessels. The total capacity at the moment is</p> <p>14 about 175 vessels operated.</p> <p>15 Q. So Hapag-Lloyd operates about 175</p> <p>16 vessels?</p> <p>17 A. Yes.</p> <p>18 Q. That's either owned or chartered?</p> <p>19 A. Yeah.</p> <p>20 Q. I'm going to show you documents</p> <p>21 that we've marked as Exhibits 1 and 2. It's the</p> <p>22 Notice of 30(b)(6) Deposition that we've issued</p> <p>23 in two of these three cases. I believe the</p> <p>24 understanding is that you're here for a third</p> <p>25 case as well, case number 15-cv-6718.</p>	<p style="text-align: right;">Page 17</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 3?</p> <p>3 MR. FERNANDEZ: Objection to form.</p> <p>4 A. Some of this has been part of the</p> <p>5 declaration I had given earlier this year.</p> <p>6 Q. You understand that you're</p> <p>7 appearing here today as the corporate</p> <p>8 representative of Hapag-Lloyd, and you prepared</p> <p>9 yourself to answer questions about topics, such</p> <p>10 as the topics that are listed here on page 3?</p> <p>11 A. Yes.</p> <p>12 Q. Who at Hapag-Lloyd is authorized to</p> <p>13 procure fuel bunkers for the vessels?</p> <p>14 A. The Hapag-Lloyd purchasing</p> <p>15 department.</p> <p>16 Q. Who is in the Hapag-Lloyd</p> <p>17 purchasing department?</p> <p>18 A. As it's my department, I'm leading</p> <p>19 that department as a director and I'm leading a</p> <p>20 team of purchasing managers. This team is</p> <p>21 entitled also to order fuel oil -- we are</p> <p>22 entitled and authorized to order and purchase</p> <p>23 fuel oil.</p> <p>24 Q. And about how long have you been</p> <p>25 the director of the fuel purchasing department</p>

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<p style="text-align: right;">Page 18</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 at Hapag-Lloyd?</p> <p>3 A. As a director, they put me into</p> <p>4 that position I think it was in October 2007.</p> <p>5 Q. About how long have you been</p> <p>6 working for Hapag-Lloyd?</p> <p>7 A. I started my career at Hapag-Lloyd</p> <p>8 in 1990.</p> <p>9 Q. Were you employed by any other</p> <p>10 companies previous to that?</p> <p>11 A. Yes.</p> <p>12 Q. Where were you employed prior to</p> <p>13 1990?</p> <p>14 A. Prior to 1990 I have been employed</p> <p>15 by a company called Sachs-Dolmar, which is a</p> <p>16 chain saw manufacturer.</p> <p>17 Q. Would you mind spelling that for</p> <p>18 the record?</p> <p>19 A. At that time the company's name</p> <p>20 was --</p> <p>21 THE INTERPRETER: Spell just the</p> <p>22 name.</p> <p>23 A. S-a-c-h-s then hyphen D-o-l-m-a-r.</p> <p>24 Q. What was your first position at</p> <p>25 Hapag-Lloyd?</p>	<p style="text-align: right;">Page 20</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 the 1990s?</p> <p>3 A. At that time we operated about 35,</p> <p>4 40 vessels.</p> <p>5 Q. So by the time of about 2007,</p> <p>6 Hapag-Lloyd had grown and you needed more</p> <p>7 purchasers on the team?</p> <p>8 A. Yes.</p> <p>9 Q. So you've been director of the fuel</p> <p>10 purchasing team from 2007 to the present?</p> <p>11 A. Right.</p> <p>12 Q. In about 2013 and 2014, about how</p> <p>13 large was the bunker purchasing team at</p> <p>14 Hapag-Lloyd?</p> <p>15 A. At that time we had a total team of</p> <p>16 five persons, including me. There was me as a</p> <p>17 director and four purchasing managers.</p> <p>18 Q. Who were the purchasing managers on</p> <p>19 your team?</p> <p>20 A. The purchasing manager on my team</p> <p>21 at that time was Lukas Gaus.</p> <p>22 Q. L-u-k-a-s?</p> <p>23 A. Yes. Then Gaus, G-a-u-s. Nikolai</p> <p>24 Doerner.</p> <p>25 Q. Would you mind spelling that?</p>
<p style="text-align: right;">Page 19</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 A. A purchasing manager for technical</p> <p>3 spare parts and tools.</p> <p>4 Q. And you came to that position in</p> <p>5 1990?</p> <p>6 A. Yes.</p> <p>7 Q. What did you do after that?</p> <p>8 A. They lifted me into the position of</p> <p>9 a director.</p> <p>10 Q. So you were the purchasing --</p> <p>11 A. Between May 1990 and 1992 I was a</p> <p>12 technical purchasing manager, and then I moved</p> <p>13 over into the position of a fuel oil purchaser</p> <p>14 in 1992, and stayed in this position until 2007.</p> <p>15 Q. Could you describe what your</p> <p>16 responsibilities were as a fuel oil purchaser</p> <p>17 during that time period, between 1992 and 2007?</p> <p>18 A. I was physically doing the</p> <p>19 purchasing, there was no team. I mean there was</p> <p>20 a small team, the team was only limited to, when</p> <p>21 I started, to two persons.</p> <p>22 Q. Was Hapag-Lloyd a smaller company</p> <p>23 back in the 1990s?</p> <p>24 A. Yes. At that time, yes.</p> <p>25 Q. About how large was Hapag-Lloyd in</p>	<p style="text-align: right;">Page 21</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 A. Nikolai, N-i-k-o-l-a-i, and the</p> <p>3 family name Doerner, it's D-o-e-r-n-e-r. Then</p> <p>4 we have Mrs. Niemeyer, Dorit Niemeyer.</p> <p>5 Q. N-i-e-m-e-y-e-r?</p> <p>6 A. Yeah, Niemeyer. We had Ana Dubois.</p> <p>7 THE INTERPRETER: D-u-b-o-i-s.</p> <p>8 Q. So those individuals report to you,</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. Who do you report to?</p> <p>12 A. I report to the senior director of</p> <p>13 purchasing and supply. The name?</p> <p>14 Q. Yes. Please.</p> <p>15 A. Ulf Naujeck. U-l-f, then the</p> <p>16 family name Naujeck, N-a-u-j-e-c-k.</p> <p>17 Q. Is the bunker purchasing team</p> <p>18 located in Hamburg?</p> <p>19 A. Yes.</p> <p>20 Q. That is where Hapag-Lloyd is</p> <p>21 headquartered?</p> <p>22 A. Yes.</p> <p>23 Q. About how many employees does</p> <p>24 Hapag-Lloyd have in total today?</p> <p>25 MR. FERNANDEZ: Is this in Hamburg</p>

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<p style="text-align: right;">Page 22</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 or worldwide?</p> <p>3 A. I think worldwide about 12,000.</p> <p>4 I'm not sure. We have a lot of seafarers, we</p> <p>5 have a lot of land-based people, we have a lot</p> <p>6 of offices around worldwide.</p> <p>7 Q. So worldwide, ballpark, about</p> <p>8 12,000 people?</p> <p>9 A. I would assume that, yes.</p> <p>10 Q. And in Hamburg, about how many</p> <p>11 people in the headquarters?</p> <p>12 A. In Hamburg, I think about a</p> <p>13 thousand. This is also an estimation, I don't</p> <p>14 have the actual figures.</p> <p>15 Q. Do you understand that the cases</p> <p>16 that you're appearing here in connection as</p> <p>17 Hapag-Lloyd's corporate representative today</p> <p>18 involve certain bunker purchasing transactions</p> <p>19 with vessels that involved Hapag-Lloyd,</p> <p>20 including the SANTA ROBERTA, the SEASPAN</p> <p>21 HAMBURG, the VIENNA EXPRESS, the SOFIA EXPRESS,</p> <p>22 the DERBY D and SIDNEY EXPRESS?</p> <p>23 A. Yes.</p> <p>24 Q. Did Hapag-Lloyd own or charter</p> <p>25 those vessels?</p>	<p style="text-align: right;">Page 24</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 A. Yes.</p> <p>3 Q. Let me show you a document with</p> <p>4 Bates numbers USOT 000101 through 107. This is</p> <p>5 a document that's attached to Hapag-Lloyd's</p> <p>6 complaint that was filed December 17, 2014.</p> <p>7 MR. MALONEY: We'll mark it as</p> <p>8 Exhibit 3.</p> <p>9 (Kock Exhibit 3, Document Bates</p> <p>10 stamped USOT 000101 through USOT 107, marked for</p> <p>11 identification.)</p> <p>12 Q. Sir, have you seen this document</p> <p>13 before?</p> <p>14 A. Yes.</p> <p>15 Q. What is this document?</p> <p>16 A. This is a contract pamphlet</p> <p>17 covering our requirements, our fuel oil</p> <p>18 requirements in the Ports of Antwerp and</p> <p>19 Rotterdam during the period of January 1st and</p> <p>20 December 31, 2014.</p> <p>21 Q. And the --</p> <p>22 A. For the below mentioned fuel oil</p> <p>23 grades and expected quantities.</p> <p>24 Q. What does ARA mean at the top?</p> <p>25 A. ARA is the abbreviation for the</p>
<p style="text-align: right;">Page 23</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 A. The VIENNA EXPRESS is an owned</p> <p>3 vessel.</p> <p>4 Q. We'll take them one by one as we go</p> <p>5 through. In connection with those vessels that</p> <p>6 I just mentioned, did Hapag enter into a</p> <p>7 contract with anyone whereby they purchased fuel</p> <p>8 for those vessels?</p> <p>9 MR. FERNANDEZ: Objection to the</p> <p>10 form.</p> <p>11 A. The purchasing is done by</p> <p>12 Hapag-Lloyd's purchasing department. We are not</p> <p>13 entitling any other party to do the purchasing</p> <p>14 for us, we are the responsible purchasers.</p> <p>15 Q. Understood. So in connection with</p> <p>16 those vessels that I mentioned, those six</p> <p>17 vessels, who did Hapag-Lloyd's bunker purchasing</p> <p>18 department purchase the fuel from?</p> <p>19 A. We purchased the fuel from O.W.</p> <p>20 Bunker in Germany.</p> <p>21 Q. O.W. Bunker Germany, GMBH?</p> <p>22 A. Yes.</p> <p>23 Q. Did you enter into any agreements</p> <p>24 with O.W. Bunker Germany about the price of fuel</p> <p>25 that you would purchase from them?</p>	<p style="text-align: right;">Page 25</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 Ports of Hamburg, Rotterdam and Amsterdam.</p> <p>3 Q. This contract appears to relate to</p> <p>4 fuel deliveries during the year 2014?</p> <p>5 A. Yes.</p> <p>6 Q. And the seller is listed as O.W.</p> <p>7 Bunker Germany?</p> <p>8 A. Yes.</p> <p>9 Q. And the buyer is Hapag-Lloyd AG in</p> <p>10 Hamburg?</p> <p>11 A. Yes.</p> <p>12 Q. Does this contract relate to</p> <p>13 particular fuel deliveries, or is it a pricing</p> <p>14 agreement that's used prior to particular</p> <p>15 transactions being entered into?</p> <p>16 MR. FERNANDEZ: Objection to the</p> <p>17 form.</p> <p>18 A. This is a pricing agreement on</p> <p>19 expected annual quantities which we provided</p> <p>20 here in column 3 and 4, because we contracted</p> <p>21 some different fuel oil grades here in this</p> <p>22 contract. RMG, RMK 700, RMK 500 low sulfur, RMG</p> <p>23 380 low sulfur, and distillate fuel like DMZ and</p> <p>24 DMA, also low sulfur.</p> <p>25 MR. FERNANDEZ: For the record, the</p>

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<p style="text-align: right;">Page 26</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 witness is referring to USOT 101, the first page</p> <p>3 of the document.</p> <p>4 Q. Was this agreement for one</p> <p>5 transaction or more than one transaction?</p> <p>6 A. More than one transaction.</p> <p>7 Q. Were you involved or was a member</p> <p>8 of your team involved in negotiating this</p> <p>9 document?</p> <p>10 A. Yeah. I was involved, team members</p> <p>11 were involved, as well as the senior director of</p> <p>12 purchasing and supply.</p> <p>13 Q. When was the first time that you</p> <p>14 worked with O.W. Bunker Germany or other</p> <p>15 entities in the O.W. Bunker Group?</p> <p>16 A. We started working with O.W. in</p> <p>17 2007.</p> <p>18 Q. Did you often purchase fuel from</p> <p>19 O.W. Bunker Germany?</p> <p>20 MR. FERNANDEZ: Objection to the</p> <p>21 form. Go ahead, you can answer.</p> <p>22 A. Yes.</p> <p>23 Q. Did you deal with any other</p> <p>24 entities in the O.W. Bunker Group?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 28</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 indicative and the buyer is allowed to exceed or</p> <p>3 reduce the quantities, along with buyer's</p> <p>4 requirements, in the above mentioned ports by</p> <p>5 plus or minus 20%."</p> <p>6 Do you have an understanding of</p> <p>7 what that means?</p> <p>8 A. In case of unexpected changes of</p> <p>9 services there is a good chance that we will be</p> <p>10 not able to take the expected quantities as</p> <p>11 given in this contract here. Or in case of</p> <p>12 vessel sales, there might be a good chance to</p> <p>13 buy less than previously agreed upon. Or it's</p> <p>14 the other way around, it could be even more</p> <p>15 sometimes.</p> <p>16 This is just a requirement to</p> <p>17 secure that there is some kind of flexibility in</p> <p>18 these quantities, that we are not bound to these</p> <p>19 quantities, to have a flexibility of some plus</p> <p>20 or minus 20 percent.</p> <p>21 Q. In case the vessel needs more or</p> <p>22 less?</p> <p>23 A. In case the vessel needs more or</p> <p>24 less, or in case we are just changing service</p> <p>25 volumes from one area to another area.</p>
<p style="text-align: right;">Page 27</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 Q. Only with O.W. Germany?</p> <p>3 A. Yes. There was a time in between</p> <p>4 when they were -- when the company was named</p> <p>5 Wrist Bunker.</p> <p>6 Q. Wrist, W-r-i-s-t?</p> <p>7 A. Yes. This was the same people.</p> <p>8 Q. About how long did it take to</p> <p>9 negotiate this document here, USOT page 101?</p> <p>10 A. This contract was negotiated for</p> <p>11 the total requirements of that specific -- these</p> <p>12 products during the period of 2014, though it</p> <p>13 has been negotiated between October to</p> <p>14 December 2013.</p> <p>15 Q. Did you have a pricing agreement in</p> <p>16 place for the year 2013 with O.W. Germany?</p> <p>17 MR. FERNANDEZ: Objection to the</p> <p>18 form.</p> <p>19 A. Might be. I don't have access to</p> <p>20 my records here. So it could be that we had</p> <p>21 selected products agreements also in 2013 also</p> <p>22 in other areas, not only in Rotterdam and</p> <p>23 Antwerp.</p> <p>24 Q. The line below the chart reads:</p> <p>25 "The above mentioned quantities are</p>	<p style="text-align: right;">Page 29</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 Sometimes it could happen that we will buy less</p> <p>3 fuel oil in Northwest Europe and shift</p> <p>4 quantities, more quantities to Asia; because</p> <p>5 also maybe the price levels in Asia could drop</p> <p>6 below Northwest Europe and we could take more in</p> <p>7 Asia; to have that flexibility.</p> <p>8 Q. In the event you needed to make</p> <p>9 those changes, you would communicate with</p> <p>10 persons at O.W. Germany?</p> <p>11 A. Yes.</p> <p>12 Q. Under the heading marked</p> <p>13 "Pre-Planning" the document reads "Monthly</p> <p>14 pre-planning schedule to be sent in advance for</p> <p>15 the following month."</p> <p>16 Did Hapag-Lloyd send a schedule to</p> <p>17 O.W. Germany?</p> <p>18 A. Yes.</p> <p>19 Q. What was the purpose of the monthly</p> <p>20 pre-planning schedule?</p> <p>21 A. To give them an idea about the</p> <p>22 estimated quantities which will be taken in that</p> <p>23 month. Plus, they have also to take care to</p> <p>24 have enough product available for us.</p> <p>25 Q. Could you tell me what the line</p>

8 (Pages 26 to 29)

<p style="text-align: right;">Page 38</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 in this version of our terms and conditions.</p> <p>3 Q. Looking at page 102 --</p> <p>4 A. Claims. This is paragraph 13 on</p> <p>5 page 106 on top, any claim to the quality or the</p> <p>6 description of this fuel oil must be notified in</p> <p>7 writing promptly after the circumstances giving</p> <p>8 rise to such claim have been discovered, if the</p> <p>9 buyer do not notify the seller of such claim</p> <p>10 within 60 calendar days of the date of delivery</p> <p>11 for term contracted low sulfur fuel oil supplies</p> <p>12 in Antwerp or Rotterdam.</p> <p>13 So this mentioned here means we</p> <p>14 have a special agreement on the -- or we have</p> <p>15 had a special agreement on the quality claim of</p> <p>16 60 days only for low sulfur fuel oils in Antwerp</p> <p>17 and Rotterdam. Then the next sentence says 30</p> <p>18 days of the date of delivery for supplies of oil</p> <p>19 in remaining ports worldwide. So this pamphlet</p> <p>20 here is not a standard Hapag -Lloyd pamphlet,</p> <p>21 this pamphlet here has been negotiated with O.W.</p> <p>22 Q. So these terms and conditions apply</p> <p>23 to purchases and sales with O.W. Bunker Germany,</p> <p>24 is that your position?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 40</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 by O.W. Bunker Germany, because they didn't</p> <p>3 accept our required claim period of 60 days at</p> <p>4 that time.</p> <p>5 Q. So is it fair to say that the</p> <p>6 document at 101 and 102 was prepared by O.W.</p> <p>7 Bunker Germany?</p> <p>8 A. Yes.</p> <p>9 Q. And that the terms and conditions</p> <p>10 at pages 103 to 107 were prepared by</p> <p>11 Hapag-Lloyd?</p> <p>12 A. Yes.</p> <p>13 Q. The SANTA ROBERTA, that's one of</p> <p>14 the vessels at issue here today, was that on</p> <p>15 time charter in 2014?</p> <p>16 A. It was a charter vessel. I don't</p> <p>17 know whether it was a time charter. It was a</p> <p>18 charter vessel at that time.</p> <p>19 Q. Do you know whether the</p> <p>20 relationship was governed by a Charter Party</p> <p>21 agreement?</p> <p>22 A. Yes, it must be a Charter Party.</p> <p>23 Q. Was it Hapag-Lloyd that was</p> <p>24 responsible for purchasing the fuel for the</p> <p>25 SANTA ROBERTA?</p>
<p style="text-align: right;">Page 39</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 MR. FERNANDEZ: Objection as to</p> <p>3 form.</p> <p>4 MR. KEOUGH: Could you read back</p> <p>5 the last question, I didn't hear the end of the</p> <p>6 question.</p> <p>7 (Record read.)</p> <p>8 MR. FERNANDEZ: In relation to the</p> <p>9 vessels we're discussing here? These are pretty</p> <p>10 broad statements that are being made and I don't</p> <p>11 think you've asked him about the vessels that</p> <p>12 we're looking at here.</p> <p>13 MR. MALONEY: We'll get to it</p> <p>14 vessel by vessel.</p> <p>15 Q. The document at pages 101 and 102</p> <p>16 is on O.W. Bunker's letterhead, but the document</p> <p>17 from pages 103 to 107 is on Hapag-Lloyd's</p> <p>18 letterhead.</p> <p>19 Do you understand the reason for</p> <p>20 the difference?</p> <p>21 A. Because these negotiated terms and</p> <p>22 conditions has been originally based upon our</p> <p>23 terms and conditions. There was some</p> <p>24 corrections made to bring this into an</p> <p>25 acceptable version, which also could be accepted</p>	<p style="text-align: right;">Page 41</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 A. Yes.</p> <p>3 Q. Do you know who owned that vessel</p> <p>4 in 2014?</p> <p>5 A. No.</p> <p>6 Q. How does the order come into the</p> <p>7 bunker purchasing department, is it communicated</p> <p>8 to your department by the vessel?</p> <p>9 MR. FERNANDEZ: Objection to the</p> <p>10 form.</p> <p>11 A. There is no order coming into our</p> <p>12 department. There is a requisition coming from</p> <p>13 the vessel into our department.</p> <p>14 MR. MALONEY: Let's mark this</p> <p>15 document as Exhibit 4, it's HPL-USOT page 131.</p> <p>16 (Kock Exhibit 4, Document Bates</p> <p>17 stamped HPL-USOT page 131, marked for</p> <p>18 identification.)</p> <p>19 Q. Have you seen this document before?</p> <p>20 A. Yes.</p> <p>21 Q. What is this document?</p> <p>22 A. This is a requisition of the SANTA</p> <p>23 ROBERTA for 3,000 tons of heavy fuel oil and</p> <p>24 100 tons of diesel oil at the U.S. East Coast or</p> <p>25 West Coast, I don't know, and Canada.</p>

11 (Pages 38 to 41)

<p style="text-align: right;">Page 42</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 Q. This email is coming from the</p> <p>3 vessel --</p> <p>4 A. Sorry, sorry. For me this looks</p> <p>5 more than a pre-communication between the vessel</p> <p>6 and the vessel's stowage center, because these</p> <p>7 guys say, "Please note vessel intends to raise</p> <p>8 the requisition for 3,000 tons." So this has to</p> <p>9 be coordinated with the responsible stowage</p> <p>10 center.</p> <p>11 Q. Do you know any of the recipients</p> <p>12 on this email?</p> <p>13 A. Yep.</p> <p>14 Q. Who is Harry Moran?</p> <p>15 A. I don't know Harry, but the next</p> <p>16 address, Marine NONGA, this is TPA, at that time</p> <p>17 was the stowage center. I think Harry Moran was</p> <p>18 part of the team. The Marine NONGA was a big</p> <p>19 branch of a centralized email address of a big</p> <p>20 number of individuals, and just was putting</p> <p>21 Harry Moran up front of it to be sure that he is</p> <p>22 taking care to give his okay for 3,000 tons of</p> <p>23 fuel oil.</p> <p>24 Q. What does TPA stand for?</p> <p>25 A. Tampa. At that time this was the</p>	<p style="text-align: right;">Page 44</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 September 26, 2014 from the SANTA ROBERTA to</p> <p>3 RQMT-Section 4 and others?</p> <p>4 A. Yes.</p> <p>5 Q. Have you seen this email before?</p> <p>6 A. Yes.</p> <p>7 Q. What does this document refer to?</p> <p>8 A. This document refers to the bunker</p> <p>9 requisition form which should be attached to</p> <p>10 this email here.</p> <p>11 Q. On page 136, is that the bunker</p> <p>12 requisition form?</p> <p>13 A. Yes.</p> <p>14 Q. Is this a request from the vessels,</p> <p>15 the stem bunkers, at Tacoma, Washington?</p> <p>16 MR. FERNANDEZ: Objection to the</p> <p>17 form.</p> <p>18 A. This is a bunker requisition asking</p> <p>19 Hapag-Lloyd fuel purchasing to deliver the</p> <p>20 mentioned quantities and qualities.</p> <p>21 Q. Who is iocdo@nrcc.com in the cc</p> <p>22 line of this email?</p> <p>23 A. I don't know. It's not known to</p> <p>24 me. Maybe it's one of the owner's addresses,</p> <p>25 the owner of the vessel, because SANTA ROBERTA</p>
<p style="text-align: right;">Page 43</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 location where these guys were sitting.</p> <p>3 Q. Is NONGA an acronym, N-O-N-G-A?</p> <p>4 A. Yeah, but I can't explain it.</p> <p>5 Q. What is Fleet 4?</p> <p>6 A. Fleet 4 is also a -- possibly</p> <p>7 related to a stowage center, to another part. I</p> <p>8 can't really give a clear definition here</p> <p>9 because I do not have the codes really here they</p> <p>10 used at that time.</p> <p>11 Q. I have the same question about the</p> <p>12 other persons copied on this email?</p> <p>13 A. Vpillai, I don't know that.</p> <p>14 Michael Nigmann is known, he is one of the</p> <p>15 controlling guys in our company. Then we have</p> <p>16 the RQMT-Section 4 mailbox included, but this is</p> <p>17 more an informal message for these guys at that</p> <p>18 time.</p> <p>19 MR. MALONEY: Let's take a look at</p> <p>20 a document Bates labeled HPL-USOT page 135 and</p> <p>21 136.</p> <p>22 (Kock Exhibit 5, Document Bates</p> <p>23 stamped HPL-USOT 135 and HPL-USOT 136, marked</p> <p>24 for identification.)</p> <p>25 Q. This is an email dated</p>	<p style="text-align: right;">Page 45</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 is a charter vessel, or was a charter vessel at</p> <p>3 that time. It's an MSC vessel, we can see it on</p> <p>4 the email here above the vessel's name. We also</p> <p>5 can identify the email address, VP line is also</p> <p>6 MSC, so it's the owner, but the IOCDO email, I</p> <p>7 have no idea what this is.</p> <p>8 Q. What is "RQMT-Section 4"?</p> <p>9 A. This is the mailbox of our</p> <p>10 department for that bunker section.</p> <p>11 Q. Your bunker purchasing department?</p> <p>12 A. This is our purchasing department.</p> <p>13 We have a couple of mailboxes available, the</p> <p>14 service is divided.</p> <p>15 Q. Would you receive emails at this</p> <p>16 address?</p> <p>17 A. Pardon?</p> <p>18 Q. Would you receive emails at this</p> <p>19 RQMT address?</p> <p>20 A. Not me personally. This is an</p> <p>21 email address of one of our purchasing managers</p> <p>22 Q. Which person is that?</p> <p>23 A. I can't remember who was taking</p> <p>24 care for the section 4 in 2014.</p> <p>25 Q. Did section 4 --</p>

12 (Pages 42 to 45)

<p style="text-align: right;">Page 46</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 A. I can remember Lukas Gaus was</p> <p>3 taking care of section 1 in that year. I can</p> <p>4 remember Mr. Doerner was taking care of section</p> <p>5 2. Ms. Niemeyer was taking care of section 3,</p> <p>6 I'm not really sure. So Mrs. Dubois should be</p> <p>7 responsible for section 4 at that time.</p> <p>8 Q. What's your level of confidence in</p> <p>9 that recollection?</p> <p>10 A. 75 percent.</p> <p>11 MR. KEOUGH: Object.</p> <p>12 MR. FERNANDEZ: Let's not speculate</p> <p>13 or guess, if you know something you know</p> <p>14 something. If you don't know you don't know.</p> <p>15 A. That's two years ago.</p> <p>16 Q. Would there be a document that</p> <p>17 would refer to which persons of your team were</p> <p>18 responsible for which sections?</p> <p>19 A. Yes.</p> <p>20 Q. Would that document be in your</p> <p>21 files back in Hamburg?</p> <p>22 A. Yes.</p> <p>23 Q. What did the sections relate to?</p> <p>24 Were they geographic designations?</p> <p>25 A. That's how it started. That's how</p>	<p style="text-align: right;">Page 48</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 A. Yes. 2013-2014.</p> <p>3 Q. Could you tell me just generally</p> <p>4 how were the sections reorganized?</p> <p>5 A. We came to the conclusion that it</p> <p>6 would not be longer feasible to just have the</p> <p>7 strict geographical limitation, but also to look</p> <p>8 more into the services. So there was a more</p> <p>9 service-oriented pattern brought forward.</p> <p>10 Q. What's the next step for the bunker</p> <p>11 purchasing department at Hapag-Lloyd after a</p> <p>12 bunker requisition form comes in from the</p> <p>13 vessel?</p> <p>14 A. To confirm it. To confirm the</p> <p>15 receipt of that document.</p> <p>16 Q. After the bunker purchasing</p> <p>17 department at Hapag-Lloyd confirms receipt of a</p> <p>18 bunker requisition form, what do members of your</p> <p>19 team do next?</p> <p>20 A. Next they are looking whether the</p> <p>21 requisition makes sense. Whether there are</p> <p>22 ports around this port which has been named</p> <p>23 here, Tacoma, on the vessel schedule which might</p> <p>24 be more economic to buy fuel oil, for example.</p> <p>25 Then to communicate with the vessel to check</p>
<p style="text-align: right;">Page 47</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 it started. We had a strict geographically --</p> <p>3 THE INTERPRETER: Limitation.</p> <p>4 A. -- limitation that each section was</p> <p>5 taking care just for a specific geographic</p> <p>6 region. It started with section 1 responsible</p> <p>7 for U.S. and South Americas. Section 2</p> <p>8 responsible for North West Europe, section 3 was</p> <p>9 responsibilities for Asia Pacific area, and then</p> <p>10 we added at that time a section 4 responsible</p> <p>11 for the Mediterranean area, and also certain</p> <p>12 parts of the U.S.</p> <p>13 This was always handled also kind</p> <p>14 of flexible in case of somebody was going on</p> <p>15 vacation or being absent, on sick leave. Also,</p> <p>16 the discipline of the vessels, taking care to</p> <p>17 direct the emails into the correct requirement</p> <p>18 section was not 100 percent.</p> <p>19 Q. Was there a reorganization at a</p> <p>20 certain point as to these sections?</p> <p>21 A. Yes.</p> <p>22 Q. When was that?</p> <p>23 A. This was the hiring of Mrs. Dubois</p> <p>24 and Mr. Gaus.</p> <p>25 Q. So sometime in 2014?</p>	<p style="text-align: right;">Page 49</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 whether it would be possible for the vessel to</p> <p>3 maybe go also to another port to buy it more</p> <p>4 economically.</p> <p>5 Q. Let's take a look at the next</p> <p>6 exhibit.</p> <p>7 (Kock Exhibit 6, Document Bates</p> <p>8 stamped HPL-USOT 137 and HPL-USOT 138, marked</p> <p>9 for identification.)</p> <p>10 Q. I'm handing you a document that's</p> <p>11 been marked as Exhibit 6, Bates labeled HPL-USOT</p> <p>12 137 and 138. Have you seen this document</p> <p>13 before?</p> <p>14 A. Yes.</p> <p>15 Q. What is this document?</p> <p>16 A. This is the confirmation of the</p> <p>17 responsible section manager, which was Lukas</p> <p>18 Gaus here at that time. That he received the</p> <p>19 vessel's requirement and that he would suggest</p> <p>20 to not only concentrate on Tacoma, but also do</p> <p>21 it for all those agents in Oakland with an</p> <p>22 inquiry.</p> <p>23 This is generally being done for</p> <p>24 all bunker requisitions coming from vessels to</p> <p>25 make sure the guys onboard know that we received</p>

13 (Pages 46 to 49)

Page 50	Page 52
<p>1 Norbert Kock (1-19-16)</p> <p>2 the requirement, otherwise they are not sure.</p> <p>3 They might be asking us or picking on us.</p> <p>4 (Kock Exhibit 7, Document Bates</p> <p>5 stamped HPL-USOT 139 and HPL-USOT 140, marked</p> <p>6 for identification.)</p> <p>7 Q. I'm handing you a document that</p> <p>8 we've marked as Exhibit 7, pages 139 to 140</p> <p>9 HPL-USOT 139 to 140.</p> <p>10 So after you've confirmed receipt</p> <p>11 of the bunker requisition, what is the next step</p> <p>12 for the bunker purchase department?</p> <p>13 A. To investigate the local markets to</p> <p>14 start a tender process, an inquiry.</p> <p>15 Q. The email that I've placed in front</p> <p>16 of you that's stamped pages 139 to 140, is that</p> <p>17 a tender or inquiry?</p> <p>18 A. Yes.</p> <p>19 Q. Is this an email blast to multiple</p> <p>20 participants?</p> <p>21 A. Pardon?</p> <p>22 Q. Is this an email that's sent out to</p> <p>23 your counterparties?</p> <p>24 A. Yes.</p> <p>25 Q. About how many counterparties did</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 no other -- at that time there was no other</p> <p>3 chance for us but to go to traders.</p> <p>4 Q. Would you have any preference to</p> <p>5 use O.W. Bunker as opposed to another trader?</p> <p>6 A. No.</p> <p>7 Q. Would your primary consideration be</p> <p>8 price or something else?</p> <p>9 A. Price is one of the considerations,</p> <p>10 yes, but also the product quality which is</p> <p>11 offered by the trader.</p> <p>12 (Kock Exhibit 8, Document Bates</p> <p>13 stamped HPL-USOT 144 to HPL-USOT 146, marked for</p> <p>14 identification.)</p> <p>15 Q. We have marked as the next exhibit,</p> <p>16 Exhibit 8, a document Bates labeled HPL-USOT 144</p> <p>17 to 146.</p> <p>18 This is an email chain between</p> <p>19 Mr. Gaus and Andre Maierhofer,</p> <p>20 M-a-i-e-r-h-o-f-e-r?</p> <p>21 A. Yes.</p> <p>22 Q. Do you know Mr. Maierhofer?</p> <p>23 A. Yes.</p> <p>24 Q. Who is he?</p> <p>25 A. He is one of the salespersons of</p>
Page 51	Page 53
<p>1 Norbert Kock (1-19-16)</p> <p>2 the bunker purchasing department have in 2014?</p> <p>3 A. In total?</p> <p>4 MR. FERNANDEZ: Objection to the</p> <p>5 form.</p> <p>6 Q. Was it more than ten?</p> <p>7 A. Yes, about 50; 40, 50.</p> <p>8 Q. Around the world?</p> <p>9 A. Yes.</p> <p>10 Q. Would Mr. Gaus send this to a</p> <p>11 selection of those counterparties only in the</p> <p>12 ports, the applicable ports?</p> <p>13 A. Yeah.</p> <p>14 MR. FERNANDEZ: Objection to the</p> <p>15 form.</p> <p>16 Q. After this inquiry is sent out,</p> <p>17 would the bunker purchasing department receive</p> <p>18 quotes for the supply?</p> <p>19 A. Yes.</p> <p>20 Q. Would that be from entities like</p> <p>21 the O.W. Bunker Group?</p> <p>22 A. Yes.</p> <p>23 Q. Anyone else?</p> <p>24 A. Traders. I mean specifically here</p> <p>25 for this region at the U.S. West Coast there's</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 Peninsula Petroleum.</p> <p>3 Q. What is Peninsula Petroleum?</p> <p>4 A. Peninsula Petroleum is a, in</p> <p>5 certain areas of the world a physical supplier,</p> <p>6 in other areas acting as a trader.</p> <p>7 Q. Were they in competition with O.W.</p> <p>8 Germany?</p> <p>9 A. Yes.</p> <p>10 Q. Were they providing a quote here to</p> <p>11 fuel the SANTA ROBERTA?</p> <p>12 A. Yes.</p> <p>13 Q. At the top of the email</p> <p>14 Mr. Maierhofer says, "Hi Lukas, any feedback on</p> <p>15 this one, are we in the ballpark?"</p> <p>16 Do you understand what he means by</p> <p>17 that sentence?</p> <p>18 A. He demanded for a feedback from</p> <p>19 Lukas Gaus whether his quotation is favorable or</p> <p>20 not that he possibly could --</p> <p>21 (Discussion between interpreter and</p> <p>22 the witness.)</p> <p>23 MR. KEOUGH: The witness is</p> <p>24 conferring with the interpreter and I'm not sure</p> <p>25 what's being discussed while the question is</p>

<p style="text-align: right;">Page 54</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 pending. I would ask respectfully that the</p> <p>3 witness speak on the record.</p> <p>4 If you need to use the interpreter</p> <p>5 perhaps you could tell Mr. Maloney and they can</p> <p>6 discuss it with your lawyer. I think the record</p> <p>7 should -- to keep the record accurate we need to</p> <p>8 have some order in that respect, if that's okay.</p> <p>9 I'm sorry to interrupt.</p> <p>10 Q. Did you understand my question,</p> <p>11 sir?</p> <p>12 A. Could you please ask your question</p> <p>13 again?</p> <p>14 (Record read.)</p> <p>15 A. Yes. This was part of the</p> <p>16 negotiation process between Lukas Gaus and</p> <p>17 Andreas Maierhofer. Andreas Maierhofer offered</p> <p>18 product and he wanted to get a feedback whether</p> <p>19 the price levels and the product quality was</p> <p>20 favorable for us or not.</p> <p>21 Q. Okay. Thank you. Did Peninsula</p> <p>22 Petroleum get the contract for the supply to the</p> <p>23 SANTA ROBERTA?</p> <p>24 A. No.</p> <p>25 MR. MALONEY: Let's take a look at</p>	<p style="text-align: right;">Page 56</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 sulfur content. This is the basic requirement</p> <p>3 from us, to have this information.</p> <p>4 Q. Would there be additional</p> <p>5 communications, other than by email, with</p> <p>6 traders like O.W. Bunker?</p> <p>7 A. Yes.</p> <p>8 Q. What would those communications be?</p> <p>9 A. Telephone, it's telephone</p> <p>10 communications. Most of the negotiation stuff</p> <p>11 was done by telephone. So if a seller cannot</p> <p>12 reach the responsible purchaser he will write an</p> <p>13 email.</p> <p>14 MR. MALONEY: We've been going for</p> <p>15 about an hour and a half, would you like to take</p> <p>16 a five-minute break?</p> <p>17 THE WITNESS: Yes.</p> <p>18 (Short recess taken.)</p> <p>19 BY MR. MALONEY:</p> <p>20 Q. We've been talking about the fuel</p> <p>21 supply to the SANTA ROBERTA. Who received the</p> <p>22 nomination for the fuel supply after the traders</p> <p>23 put in their offers to the bunker purchasing</p> <p>24 department of Hapag-Lloyd?</p> <p>25 MR. FERNANDEZ: Objection to the</p>
<p style="text-align: right;">Page 55</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 a document I'll mark as Exhibit 9.</p> <p>3 (Kock Exhibit 9, Document Bates</p> <p>4 stamped HPL-USOT 142, marked for</p> <p>5 identification.)</p> <p>6 MR. MALONEY: It's Bates labeled</p> <p>7 HPL-USOT page 142.</p> <p>8 Q. This is an email from Karl Heinz</p> <p>9 Selmer to Mr. Gaus. Have you seen this document</p> <p>10 before?</p> <p>11 A. Yes.</p> <p>12 Q. What are typical?</p> <p>13 A. Typical are naming the</p> <p>14 specifications of the fuel oil which are</p> <p>15 allowing us to calculate the specific energy of</p> <p>16 the offered product, and to see the ignition</p> <p>17 purposes of the fuel oil.</p> <p>18 Q. Do you have an understanding what</p> <p>19 Mr. Selmer is referring to under Tacoma, Oakland</p> <p>20 and LA in this email?</p> <p>21 A. Yeah, he is mentioning the required</p> <p>22 parameters to calculate the energy. He is</p> <p>23 informing us about the product viscosity, the</p> <p>24 API, which is the density of the product, the</p> <p>25 weight, the water content, the ash content, the</p>	<p style="text-align: right;">Page 57</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 form.</p> <p>3 A. O.W. Germany.</p> <p>4 MR. MALONEY: I'm going to mark as</p> <p>5 Exhibit 10 a document Bates labeled HPL-USOT 147</p> <p>6 through 150.</p> <p>7 (Kock Exhibit 10, Document Bates</p> <p>8 stamped HPL-USOT 147 through HPL-USOT 150,</p> <p>9 marked for identification.)</p> <p>10 Q. Do you recognize this document,</p> <p>11 sir?</p> <p>12 A. Yes.</p> <p>13 Q. What is this document?</p> <p>14 A. This is the formal order</p> <p>15 confirmation sent by Mr. Karl Heinz Selmer to</p> <p>16 Mr. Lukas Gaus, to confirm the order they had</p> <p>17 received from us.</p> <p>18 Q. Page 148, the attachment to this</p> <p>19 email, is this the sales order confirmation that</p> <p>20 was sent from O.W. Bunker Germany to Hapag-Lloyd</p> <p>21 AG?</p> <p>22 A. Yes.</p> <p>23 Q. The seller in this document is</p> <p>24 listed as O.W. Bunker Germany GMBH?</p> <p>25 A. Yes.</p>

15 (Pages 54 to 57)

<p style="text-align: right;">Page 58</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 Q. And it's for the supply of fuel to</p> <p>3 the SANTA ROBERTA?</p> <p>4 A. The supplier has been mentioned as</p> <p>5 U.S. Oil. U.S. Oil has been mentioned as their</p> <p>6 physical supplier.</p> <p>7 Q. Did Hapag-Lloyd have any control</p> <p>8 over the selection of the physical supplier?</p> <p>9 A. No.</p> <p>10 Q. Did Hapag-Lloyd direct O.W. Germany</p> <p>11 to use U.S. Oil for the supply of fuel in</p> <p>12 Tacoma?</p> <p>13 A. No.</p> <p>14 Q. What is Norton Lilly?</p> <p>15 A. Norton Lilly is the local agency of</p> <p>16 Hapag-Lloyd in this area.</p> <p>17 Q. Can you explain what a port agent</p> <p>18 is?</p> <p>19 A. The agent is responsible to</p> <p>20 coordinate also bunker supplies or lubricant</p> <p>21 supplies between the local vendors and the</p> <p>22 vessel; and in case of fuel oil supplies also</p> <p>23 the engaged quality control, which is normally a</p> <p>24 bunker surveyor engaged by us.</p> <p>25 Q. Was there a bunker surveyor engaged</p>	<p style="text-align: right;">Page 60</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 2007. This was a year when O.W. Bunker accepted</p> <p>3 our terms and conditions of 2006.</p> <p>4 What they are mentioning here is</p> <p>5 that they are delivering or that they will</p> <p>6 deliver based on our GTCs of 2007, but 2007 was</p> <p>7 the date of the signature. The date, the year</p> <p>8 of the start between the business relationship</p> <p>9 of Hapag-Lloyd and O.W. Bunker Germany.</p> <p>10 Q. Is it correct that Hapag-Lloyd had</p> <p>11 terms and conditions in 2007, a prior version</p> <p>12 from the document you reviewed earlier, or am I</p> <p>13 misunderstanding your response?</p> <p>14 A. The valid version at that time when</p> <p>15 the business connection was established was</p> <p>16 based on 2006. There's no version available</p> <p>17 from 2007.</p> <p>18 Q. Do you know whether the 2006</p> <p>19 version of the terms and conditions has been</p> <p>20 produced in this case?</p> <p>21 A. Yeah.</p> <p>22 MR. FERNANDEZ: It has.</p> <p>23 Q. This confirmation memorializes the</p> <p>24 agreement between O.W. Germany and Hapag for the</p> <p>25 purchase of fuel bunkers for the SANTA ROBERTA?</p>
<p style="text-align: right;">Page 59</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 in connection with this supply?</p> <p>3 A. Yes.</p> <p>4 Q. Who was that, if you recall?</p> <p>5 A. Oiltest.</p> <p>6 Q. Does a port agent such as Norton</p> <p>7 Lilly, or a bunker surveyor such as Oiltest, do</p> <p>8 they have any responsibility for purchasing</p> <p>9 fuel?</p> <p>10 A. No.</p> <p>11 Q. They are not authorized by</p> <p>12 Hapag-Lloyd to purchase fuel?</p> <p>13 A. No.</p> <p>14 Q. It's fair to say that they're</p> <p>15 involved in the logistics of coordinating the</p> <p>16 delivery after the order is placed?</p> <p>17 A. Yes.</p> <p>18 Q. Under remarks there's a designation</p> <p>19 that says "HALO GTC2007 shall apply." What does</p> <p>20 that mean?</p> <p>21 A. They are referring to an earlier</p> <p>22 accepted set of terms and conditions of</p> <p>23 Hapag-Lloyd, which has been created in 2006, but</p> <p>24 the business condition between O.W. Bunker</p> <p>25 Germany and Hapag-Lloyd were begun or started in</p>	<p style="text-align: right;">Page 61</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 A. Yes.</p> <p>3 Q. On page 149 there is a paragraph</p> <p>4 marked "Terms," and that reads that "the sale</p> <p>5 and delivery of the marine fuels described above</p> <p>6 are subject to the O.W. Bunker Group's terms and</p> <p>7 conditions of sale for marine bunkers," and it</p> <p>8 refers to Hapag-Lloyd as buyer and O.W. Bunker</p> <p>9 Germany as seller.</p> <p>10 What's your understanding of this</p> <p>11 paragraph?</p> <p>12 A. This is a -- this is a standard</p> <p>13 term in their pamphlet.</p> <p>14 Q. Did the O.W. Bunker Group's terms</p> <p>15 and conditions apply to this fuel transaction?</p> <p>16 A. No.</p> <p>17 Q. Is the basis for your statement the</p> <p>18 remarks that are listed on page 148?</p> <p>19 MR. FERNANDEZ: Objection to the</p> <p>20 form.</p> <p>21 A. In the sales order confirmation</p> <p>22 they confirmed that the Hapag-Lloyd terms and</p> <p>23 conditions shall apply.</p> <p>24 Q. Was it always the case that</p> <p>25 Hapag-Lloyd's terms and conditions applied to</p>

16 (Pages 58 to 61)

Page 62	Page 64
<p>1 Norbert Kock (1-19-16)</p> <p>2 agreements with O.W. Germany?</p> <p>3 A. Yes.</p> <p>4 Q. In every fuel transaction that you</p> <p>5 conducted with them?</p> <p>6 A. Yes.</p> <p>7 Q. Were there ever any conflicts</p> <p>8 between the Hapag-Lloyd Group's terms and</p> <p>9 conditions and the O.W. Bunker Group's terms and</p> <p>10 conditions?</p> <p>11 A. Yes.</p> <p>12 Q. Were there any disputes with O.W.</p> <p>13 Germany about that?</p> <p>14 MR. FERNANDEZ: Objection to the</p> <p>15 form.</p> <p>16 A. No, because our requirement when we</p> <p>17 started the business relationship was to accept</p> <p>18 our terms and conditions of purchasing. That's</p> <p>19 the same with any other supplier working for us,</p> <p>20 everybody has to accept our terms and conditions</p> <p>21 for purchasing, otherwise we won't come into</p> <p>22 business with these guys.</p> <p>23 (Kock Exhibit 11, Document Bates</p> <p>24 stamped HPL-USOT 151 through HPL-USOT 153</p> <p>25 marked for identification.)</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 system.</p> <p>3 Q. So Mr. Gaus has to fill in the</p> <p>4 information next to reference number, account,</p> <p>5 seller in the middle of the page here on page</p> <p>6 151?</p> <p>7 A. Yes.</p> <p>8 Q. The information about the local</p> <p>9 physical supplier that would be used by O.W.</p> <p>10 Germany, is that information that Mr. Gaus would</p> <p>11 have received from Mr. Selmer?</p> <p>12 A. Yes, and it's needed for logistical</p> <p>13 reasons.</p> <p>14 Q. Would this purchase order be</p> <p>15 generated before or after the order was agreed?</p> <p>16 A. The order agreement has taken place</p> <p>17 during a telephone call, this is the normal way</p> <p>18 we are purchasing; and then the written order</p> <p>19 would be processed later on, it could be the</p> <p>20 same day or it could be the next day depending</p> <p>21 on what time the order is placed.</p> <p>22 Q. On page 152 there are additional</p> <p>23 provisions as to quality and quantity of the</p> <p>24 fuel relating to a survey and sampling of the</p> <p>25 fuel, do you see that?</p>
Page 63	Page 65
<p>1 Norbert Kock (1-19-16)</p> <p>2 Q. What's been marked as Exhibit 11 is</p> <p>3 a document labeled HPL-USOT 151 through 153.</p> <p>4 it's an email from Mr. Gaus dated October 1,</p> <p>5 2014.</p> <p>6 Have you seen this email before?</p> <p>7 A. Yes.</p> <p>8 Q. What is this email?</p> <p>9 A. This is our written order</p> <p>10 confirmation to O.W. Bunker Germany.</p> <p>11 Q. Is this order confirmation</p> <p>12 automatically generated by your system?</p> <p>13 A. Yes.</p> <p>14 Q. Does Mr. Gaus have to fill in any</p> <p>15 of the information?</p> <p>16 A. Yes.</p> <p>17 Q. How does it work?</p> <p>18 A. It's an infrastructure available</p> <p>19 showing all these different paragraphs here</p> <p>20 which comes along with delivery, survey,</p> <p>21 sampling, payment, invoicing; but the individual</p> <p>22 order quantity, product quality, the estimated</p> <p>23 date of arrival of the vessel, this has to be</p> <p>24 included manually into this infrastructure. The</p> <p>25 infrastructure we are working with is an SAP</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 A. Um-hum.</p> <p>3 Q. Those are obligations that O.W.</p> <p>4 Germany took on?</p> <p>5 A. This is a standard requirement of</p> <p>6 Hapag-Lloyd. These procedures are standard</p> <p>7 procedures from Hapag-Lloyd. Any vendor</p> <p>8 supplier has to follow, or seller has to follow</p> <p>9 these procedures.</p> <p>10 Q. Do you know if Hapag-Lloyd made any</p> <p>11 payment on the supply to O.W. to the SANTA</p> <p>12 ROBERTA?</p> <p>13 A. Yes.</p> <p>14 Q. What's your understanding?</p> <p>15 A. We make payment to the seller.</p> <p>16 MR. MALONEY: Let me show you what</p> <p>17 I will have marked as Exhibit 12.</p> <p>18 (Kock Exhibit 12, Document Bates</p> <p>19 stamped HPL-USOT 80, marked for identification.)</p> <p>20 Q. This is a document Bates labeled</p> <p>21 HPL-USOT 80. Have you seen this document</p> <p>22 before?</p> <p>23 A. Yes.</p> <p>24 Q. What is this document?</p> <p>25 A. This is the sales invoice of O.W.</p>

17 (Pages 62 to 65)

<p style="text-align: right;">Page 66</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 Germany to Hapag-Lloyd.</p> <p>3 Q. Do you see there that the date of</p> <p>4 the invoice was October 9th of 2014?</p> <p>5 A. Yes.</p> <p>6 Q. With a due date of November 8,</p> <p>7 2014?</p> <p>8 A. Yes.</p> <p>9 Q. This invoice was paid?</p> <p>10 A. Yes.</p> <p>11 Q. What is the box in the middle on</p> <p>12 the top, it says October 20, 2014?</p> <p>13 A. This is the booking date our</p> <p>14 accounting department booked this invoice into</p> <p>15 the system. Mrs. Sakowski is an employee at the</p> <p>16 accounting department.</p> <p>17 Q. There is some handwriting and there</p> <p>18 is also a bar code on this version of the</p> <p>19 document, I would like to take those marks one</p> <p>20 at a time.</p> <p>21 What's the handwriting in the upper</p> <p>22 right-hand corner, if you know?</p> <p>23 A. I don't know.</p> <p>24 Q. In the middle right below the</p> <p>25 accounting department's stamp, do you know what</p>	<p style="text-align: right;">Page 68</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 invoice and payment to that seller?</p> <p>3 A. Yes.</p> <p>4 MR. FERNANDEZ: Objection to the</p> <p>5 form.</p> <p>6 Q. Is there anything about the other</p> <p>7 five transactions involving the SEASPAN HAMBURG,</p> <p>8 the VIENNA EXPRESS, SOFIA EXPRESS, the DERBY D</p> <p>9 or the SIDNEY EXPRESS that would be different</p> <p>10 from the transaction we just reviewed relating</p> <p>11 to the SANTA ROBERTA?</p> <p>12 MR. FERNANDEZ: Objection to the</p> <p>13 form.</p> <p>14 MR. KEOUGH: Objection to the form.</p> <p>15 A. If O.W. not had gone bust, no.</p> <p>16 (Kock Exhibit 13, Document Bates</p> <p>17 stamped HPL-USOT page 38, marked for</p> <p>18 identification.)</p> <p>19 Q. We have marked as Exhibit 13 a</p> <p>20 document Bates labeled HPL-USOT 38. Have you</p> <p>21 seen this document before?</p> <p>22 A. Yes.</p> <p>23 Q. Was this a document produced from</p> <p>24 Hapag-Lloyd's own files?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 67</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 this is?</p> <p>3 A. This is the name of the team leader</p> <p>4 of our accounting department, Mrs. Kargel.</p> <p>5 THE INTERPRETER: K-a-r-g-e-l.</p> <p>6 Q. Do you have an understanding of</p> <p>7 what the bar code refer to?</p> <p>8 A. This could be the invoicing system</p> <p>9 at that time was read automatically into our SAP</p> <p>10 system, and I think this bar code assisted the</p> <p>11 system to read the invoice specifics, or the</p> <p>12 invoice details.</p> <p>13 Q. Do you have any understanding of</p> <p>14 what the numbers refer to there?</p> <p>15 A. No. That's a code.</p> <p>16 Q. The handwritten numerals to the</p> <p>17 left?</p> <p>18 A. For me it looks like the euro U.S.</p> <p>19 dollar cost at that time.</p> <p>20 Q. If the O.W. Bunker Group had not</p> <p>21 gone bankrupt in early November, would these</p> <p>22 transactions as to these six vessels all have</p> <p>23 taken place in the same manner, which is to say</p> <p>24 bunker requisition form, offers to sellers,</p> <p>25 nomination to a particular seller, delivery,</p>	<p style="text-align: right;">Page 69</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 Q. How did Hapag-Lloyd come into</p> <p>3 possession of this document?</p> <p>4 A. This has been shown to me during</p> <p>5 the preparation of this event.</p> <p>6 Q. Was that the first time you saw a</p> <p>7 copy of this document?</p> <p>8 A. Yeah.</p> <p>9 Q. Did U.S. Oil Trading have an</p> <p>10 account with Hapag-Lloyd?</p> <p>11 A. No.</p> <p>12 Q. And this is not an invoice that was</p> <p>13 sent to Hapag-Lloyd?</p> <p>14 A. No.</p> <p>15 (Kock Exhibit 14, Document Bates</p> <p>16 stamped HPL-USOT pages 170 and HPL-USOT 171,</p> <p>17 marked for identification.)</p> <p>18 Q. We have marked as Exhibit 14 a</p> <p>19 document Bates labeled HPL-USOT pages 170 to</p> <p>20 173. Have you seen this email and its</p> <p>21 attachments before?</p> <p>22 A. This is the confirmation of the</p> <p>23 SANTA ROBERTA advising us about the received</p> <p>24 fuel oil.</p> <p>25 Q. And on page 172 what does this</p>

18 (Pages 66 to 69)

<p style="text-align: right;">Page 70</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 attachment refer to?</p> <p>3 A. This is a payment advice that</p> <p>4 Hapag-Lloyd is going to pay the different</p> <p>5 amounts for the different stamps to O.W. Bunker</p> <p>6 Germany.</p> <p>7 Q. Payment advice, is that what</p> <p>8 Zahlungsbeleg refers to?</p> <p>9 A. Yes.</p> <p>10 MR. FERNANDEZ: Just note my</p> <p>11 objection. You marked Exhibit 14 which is</p> <p>12 numbered 170 through 173, I think that may have</p> <p>13 been marked in error. You have 170 and 171 seem</p> <p>14 to be standalone documents. Then 172 and 173 I</p> <p>15 don't believe are affixed to the bunker delivery</p> <p>16 note. You can certainly ask the witness that,</p> <p>17 but please note my objection to the way this</p> <p>18 exhibit has been marked.</p> <p>19 MR. MALONEY: So noted. I agree</p> <p>20 with your characterization, Mr. Fernandez.</p> <p>21 Q. So is it the case, Mr. Kock, that</p> <p>22 the bunker delivery note at page 171 is the</p> <p>23 attachment to page 170?</p> <p>24 A. Yes.</p> <p>25 Q. And then the next pages 172 and 173</p>	<p style="text-align: right;">Page 72</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 dispute about the quantity or the quality of the</p> <p>3 fuel listed on the bunker delivery note, who</p> <p>4 would Hapag-Lloyd deal with as to that dispute?</p> <p>5 A. The responsible purchaser.</p> <p>6 Q. So is that O.W. Bunker Germany?</p> <p>7 MR. FERNANDEZ: Could you reframe</p> <p>8 the question please.</p> <p>9 MR. MALONEY: Sure.</p> <p>10 Q. So once the bunker purchasing</p> <p>11 department receives a bunker delivery note, they</p> <p>12 check the quantity and quality against the</p> <p>13 original purchase order placed with the seller,</p> <p>14 is that fair?</p> <p>15 A. Yes.</p> <p>16 Q. And if there were any disputes</p> <p>17 would Hapag-Lloyd go to its seller to resolve</p> <p>18 those?</p> <p>19 A. Yes.</p> <p>20 Q. In this case that would be O.W.</p> <p>21 Bunker Germany?</p> <p>22 A. Yes.</p> <p>23 Q. Do you know if there were any such</p> <p>24 disputes about this particular transaction?</p> <p>25 A. I can't remember. I don't think</p>
<p style="text-align: right;">Page 71</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 refer to a separate document?</p> <p>3 A. Yes. So this payment advice is</p> <p>4 normally not going through our department. It's</p> <p>5 done by our accounting department, and our</p> <p>6 accounting department is sending it out to the</p> <p>7 different vendors they are paying.</p> <p>8 MR. FERNANDEZ: Are we able to</p> <p>9 break these apart so the record is clear and</p> <p>10 mark the two pages 14?</p> <p>11 MR. MALONEY: I'm happy to mark</p> <p>12 pages 172 and 173 as Exhibit 15.</p> <p>13 MR. FERNANDEZ: Thank you.</p> <p>14 (Kock Exhibit 15, Document Bates</p> <p>15 stamped HPL-USOT 172 and HPL-USOT 173, marked</p> <p>16 for identification.)</p> <p>17 Q. Just to clear up the record. How</p> <p>18 does the bunker purchasing department at</p> <p>19 Hapag-Lloyd use the bunker delivery note that</p> <p>20 was communicated to it here in Exhibit 14?</p> <p>21 A. The quantity stated on the bunker</p> <p>22 delivery note, the metric tons, will be booked</p> <p>23 as a stop receipt into our SAP system against</p> <p>24 the existing purchase order.</p> <p>25 Q. If, for example, there was a</p>	<p style="text-align: right;">Page 73</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 there was a dispute here in this respect.</p> <p>3 Q. Now turning to Exhibit 15 which is</p> <p>4 Bates labeled HPL-USOT 172 to 173. It appears</p> <p>5 there are seven separate fuel transactions with</p> <p>6 different vessels, is that correct?</p> <p>7 A. Yes.</p> <p>8 Q. One of those vessels is the SANTA</p> <p>9 ROBERTA?</p> <p>10 A. Yes.</p> <p>11 Q. This document reflects payment made</p> <p>12 to O.W. Germany on the SANTA ROBERTA and other</p> <p>13 transactions?</p> <p>14 A. Yes.</p> <p>15 Q. Would you mind translating for the</p> <p>16 record what the German text reads after "ladies</p> <p>17 and gentlemen"?</p> <p>18 A. This is separate -- there is a</p> <p>19 separate payment of the below mentioned items.</p> <p>20 We did --</p> <p>21 THE INTERPRETER: On advisement of</p> <p>22 the correctness.</p> <p>23 A. Of the supplies.</p> <p>24 THE INTERPRETER: Of the supplies</p> <p>25 or.</p>

Page 74	Page 76
<p>1 Norbert Kock (1-19-16)</p> <p>2 A. Or performance.</p> <p>3 THE INTERPRETER: Performance and</p> <p>4 its calculation.</p> <p>5 A. And its calculation we paid.</p> <p>6 Q. Who is Frau Bolgow?</p> <p>7 A. Frau Bolgow is a manager, a worker</p> <p>8 in the accounting department.</p> <p>9 Q. This document was dated</p> <p>10 November 6th of 2014?</p> <p>11 A. Yes.</p> <p>12 (Kock Exhibit 16, Document Bates</p> <p>13 stamped HPL-USOT 87 through HPL-USOT 89, marked</p> <p>14 for identification.)</p> <p>15 A. May I say something?</p> <p>16 Q. Absolutely.</p> <p>17 A. There is something wrong here</p> <p>18 because the attachments are Hapag-Lloyd's crew</p> <p>19 lists, and the first page here is referring to</p> <p>20 an invoice and bunker delivery note coming from</p> <p>21 O.W. Bunker Germany.</p> <p>22 Q. We've marked as Exhibit 16</p> <p>23 documents that have been Bates labeled HPL-USOT</p> <p>24 87 through 89. The witness has referenced that</p> <p>25 page 87 refers to an invoice and bunker delivery</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 A. No.</p> <p>3 Q. Do you know who owns the SEASPAN</p> <p>4 HAMBURG?</p> <p>5 A. SEASPAN, but SEASPAN is a -- I</p> <p>6 don't know where the SEASPAN is here. I can't</p> <p>7 confirm this.</p> <p>8 Q. Is this a document produced from</p> <p>9 Hapag-Lloyd's files?</p> <p>10 A. This is a document which is</p> <p>11 produced between our chartering department and</p> <p>12 the vessel's manager or owner. We are not</p> <p>13 involved in that business, or our department,</p> <p>14 our purchasing department is not involved in</p> <p>15 that business.</p> <p>16 Q. Do you see under line 37 of this</p> <p>17 document, on page 201, the passage that reads</p> <p>18 that the charterers shall provide and pay for</p> <p>19 all fuel and MDO, with certain exceptions stated</p> <p>20 there in the clause?</p> <p>21 A. I see it.</p> <p>22 Q. Do you have an understanding</p> <p>23 whether that was the case for the SEASPAN</p> <p>24 HAMBURG, that the Hapag-Lloyd was the</p> <p>25 responsible party for purchasing fuel?</p>
Page 75	Page 77
<p>1 Norbert Kock (1-19-16)</p> <p>2 note from O.W. Bunker Germany, but the following</p> <p>3 pages appear to refer to an unrelated document.</p> <p>4 MR. MALONEY: I would just ask</p> <p>5 counsel to follow up on whether the correct</p> <p>6 attachments have been produced at page 87.</p> <p>7 MR. FERNANDEZ: Okay.</p> <p>8 Q. I would like to turn to the SEASPAN</p> <p>9 HAMBURG.</p> <p>10 (Kock Exhibit 17, Document labeled</p> <p>11 "Time Charter," Bates stamped HPL-USOT 201 to</p> <p>12 HPL-USOT 205, marked for identification.)</p> <p>13 Q. Was the SEASPAN HAMBURG on time</p> <p>14 charter by Hapag-Lloyd in 2014?</p> <p>15 A. That's what the pamphlet says.</p> <p>16 It's a time charter contract.</p> <p>17 Q. We've marked as Exhibit 17 a</p> <p>18 document labeled "Time Charter," it's marked</p> <p>19 HPL-USOT pages 201 to 205.</p> <p>20 Is this the time charter for the</p> <p>21 SEASPAN HAMBURG?</p> <p>22 MR. KEOUGH: Objection to the form.</p> <p>23 MR. FERNANDEZ: Objection.</p> <p>24 Q. Have you seen this document before,</p> <p>25 sir?</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 A. Yes.</p> <p>3 Q. That's the case?</p> <p>4 A. Yes.</p> <p>5 Q. Who would be the person in the</p> <p>6 chartering department responsible for</p> <p>7 negotiating that?</p> <p>8 A. Mr. Tim Petersen.</p> <p>9 Q. Tim Petersen?</p> <p>10 A. Tim Petersen, he was assigned</p> <p>11 together with his manager director, Mr. Glen</p> <p>12 Hards.</p> <p>13 Q. So you recognize those signatures</p> <p>14 there on page 205 as Mr. Petersen and Mr. Hards?</p> <p>15 A. Yes.</p> <p>16 (Kock Exhibit 18, Document Bates</p> <p>17 stamped HPL-USOT 90 through HPL-USOT 91, marked</p> <p>18 for identification.)</p> <p>19 Q. We've marked as Exhibit 18 a</p> <p>20 document Bates labeled HPL-USOT 90 through 91.</p> <p>21 Have you seen this document before?</p> <p>22 A. Yes.</p> <p>23 Q. What is this document?</p> <p>24 A. This is another bunker requisition</p> <p>25 form sent by the SEASPAN HAMBURG to our</p>

20 (Pages 74 to 77)

Page 78	Page 80
<p>1 Norbert Kock (1-19-16)</p> <p>2 department.</p> <p>3 Q. Does RQMT stand for requirement?</p> <p>4 A. Yes.</p> <p>5 Q. What is TIW in the subject line?</p> <p>6 A. This is the abbreviation of the</p> <p>7 port.</p> <p>8 Q. Tacoma Washington?</p> <p>9 A. This is a -- I think this is a</p> <p>10 code. This is a UN code -- no, this is not a UN</p> <p>11 code. For me this is a self-created</p> <p>12 abbreviation from the vessel.</p> <p>13 Q. Is there any physical supplier</p> <p>14 specified in this email or its attachment?</p> <p>15 A. No.</p> <p>16 (Kock Exhibit 19, Document Bates</p> <p>17 stamped HPL-USOT 92 through HPL-USOT 94, marked</p> <p>18 for identification.)</p> <p>19 Q. We've marked as Exhibit 192 emails</p> <p>20 and attachments that have been Bates labeled</p> <p>21 HPL-USOT 92, 93 and 94, and it appears that</p> <p>22 there are two emails and then a document behind</p> <p>23 that; is that fair to say?</p> <p>24 A. There's also some hiccup here I</p> <p>25 see, because the covering page is referring to</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 A. Yes.</p> <p>3 Q. Page 94 is a separate document?</p> <p>4 A. Yes.</p> <p>5 Q. What does the heading mean on page</p> <p>6 94?</p> <p>7 A. This is a price comparence (sic)</p> <p>8 showing --</p> <p>9 Q. Is it a price comparison?</p> <p>10 A. The meaning here is</p> <p>11 Preisvereinbarungen.</p> <p>12 THE INTERPRETER: Agreement.</p> <p>13 A. Which means agreement.</p> <p>14 Q. It says for HFO and MDO?</p> <p>15 A. Yes.</p> <p>16 Q. What is HFO and MDO?</p> <p>17 A. HFO is heavy fuel, a heavy fuel</p> <p>18 oil, and MDO means marine distillate oil.</p> <p>19 Q. This chart refers to the vessel,</p> <p>20 the SEASPAN HAMBURG?</p> <p>21 A. Yes.</p> <p>22 Q. Who fills out a chart like this?</p> <p>23 A. The responsible purchaser.</p> <p>24 Q. This appears to be a document</p> <p>25 filled out by Karl Heinz Selmer, is that</p>
Page 79	Page 81
<p>1 Norbert Kock (1-19-16)</p> <p>2 an inquiry Mr. Lukas Gaus placed into the market</p> <p>3 for this vessel calling for Tacoma, Oakland and</p> <p>4 Los Angeles in a row, and behind there is</p> <p>5 communication between Karl Heinz Selmer and O.W.</p> <p>6 Bunker and Lukas Gaus about the typical</p> <p>7 specifications of the ordered product, and</p> <p>8 another attachment referring to our price</p> <p>9 comparison we are doing.</p> <p>10 So the first page here has nothing</p> <p>11 to do with the attachments and behind. I would</p> <p>12 have expected here a copy of the inquiry from</p> <p>13 Mr. Lukas Gaus, like we had it for the previous</p> <p>14 vessel.</p> <p>15 Q. Noted.</p> <p>16 MR. FERNANDEZ: The top page, is</p> <p>17 that what you're referring to?</p> <p>18 A. This is the top page for our</p> <p>19 inquiry.</p> <p>20 Q. Page 92 refers to the inquiry that</p> <p>21 was sent into the marketplace by Hapag-Lloyd,</p> <p>22 correct?</p> <p>23 A. Yes.</p> <p>24 Q. Then page 93, is that a response</p> <p>25 from O.W. Bunker Germany?</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 correct?</p> <p>3 MR. KEOUGH: Objection.</p> <p>4 A. This document has been filled out</p> <p>5 by the responsible purchaser.</p> <p>6 Q. Who is the responsible purchaser?</p> <p>7 A. At that time it looks like Lukas</p> <p>8 Gaus was working on this vessel here, and he's</p> <p>9 using this piece of paper here to compare all</p> <p>10 the incoming orders to evaluate which offer is</p> <p>11 best, most favorable for Hapag-Lloyd.</p> <p>12 So I call it price comparence sheet</p> <p>13 because it's not an agreement. After we find an</p> <p>14 agreement here and it states with whom Mr. Gaus</p> <p>15 was making this agreement here, with O.W. Bunker</p> <p>16 Germany and Karl Heinz Selmer.</p> <p>17 Q. In the lower right, does that refer</p> <p>18 to the price that was agreed with O.W. Germany?</p> <p>19 A. In the lower right, the</p> <p>20 1.5 million?</p> <p>21 Q. Yes.</p> <p>22 A. This is the total, the total U.S.</p> <p>23 dollar order amount based on the order quantity</p> <p>24 multiplied with the price O.W. Bunker Germany</p> <p>25 gave us.</p>

21 (Pages 78 to 81)

<p style="text-align: right;">Page 82</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 Q. Do you know why O.W. Bunker is</p> <p>3 listed twice over there on the left, in the</p> <p>4 first column entitled "Anbieter"?</p> <p>5 MR. KEOUGH: Objection.</p> <p>6 A. Because they offered twice. They</p> <p>7 offered us \$520 in Oakland and they offered us</p> <p>8 \$523 in Tacoma. Although it looks like the \$523</p> <p>9 is more expensive than the other ones, we picked</p> <p>10 it because it was representing the highest</p> <p>11 energy contents.</p> <p>12 So for us it lowers energy costs,</p> <p>13 and also a very good ignition product, the CCAI</p> <p>14 value gives you some kind of knowledge about the</p> <p>15 ignition quality of the offered fuel oil, and</p> <p>16 825 is very good.</p> <p>17 Q. So because the fuel had a higher</p> <p>18 quality at a lower price O.W. Bunker got the</p> <p>19 nomination?</p> <p>20 A. Yes. You can see there's a column</p> <p>21 here under "Bestellkombination," there is the</p> <p>22 first column here.</p> <p>23 MR. KEOUGH: You can say it in</p> <p>24 English please.</p> <p>25 A. This is the total cost weighted on</p>	<p style="text-align: right;">Page 84</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 offer. You can see it on the weighted U.S.</p> <p>3 dollar amount.</p> <p>4 Q. Do you know what is GEFO in the</p> <p>5 first column of the persons who offered?</p> <p>6 A. GEFO is a Hamburg-based trader, who</p> <p>7 is also working based on our terms and</p> <p>8 conditions. As any other parties here mentioned</p> <p>9 as well.</p> <p>10 Q. And Peninsula refers to Peninsula</p> <p>11 Petroleum?</p> <p>12 A. Yes.</p> <p>13 Q. This document is dated October 10,</p> <p>14 2014, is that correct?</p> <p>15 A. This was the date of the fixing</p> <p>16 here, right, October 10th.</p> <p>17 (Kock Exhibit 20, Document Bates</p> <p>18 stamped HPL-USOT 95 through HPL-USOT 98, marked</p> <p>19 for identification.)</p> <p>20 MR. FERNANDEZ: Off the record.</p> <p>21 (Off-the-record discussion held.)</p> <p>22 Q. We've marked as Exhibit 20 a</p> <p>23 document Bates labeled HPL-USOT 95 through 98.</p> <p>24 Have you seen this document before, sir?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 83</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 energy contents.</p> <p>3 MR. KEOUGH: Which column are you</p> <p>4 referring to, sir?</p> <p>5 THE INTERPRETER: The one before</p> <p>6 last.</p> <p>7 MR. KEOUGH: Mr. Interpreter, since</p> <p>8 we haven't sworn you in yet --</p> <p>9 MR. MALONEY: He has been sworn.</p> <p>10 MR. KEOUGH: Okay. Please go</p> <p>11 ahead, sir.</p> <p>12 THE INTERPRETER: The one before</p> <p>13 last, it says IFO/MFO.</p> <p>14 THE INTERPRETER: The total cost by</p> <p>15 weight/energy.</p> <p>16 A. Sorry to correct you. It's not by</p> <p>17 weight, the energy is weighted in this cost</p> <p>18 here.</p> <p>19 THE INTERPRETER: Considered,</p> <p>20 listed weighted.</p> <p>21 A. No, weighted, because we do an</p> <p>22 energy calculation here. We have an Energiewert</p> <p>23 here also. This Energiewert will be weighted in</p> <p>24 the total cost. So this offer here, the second</p> <p>25 offer by O.W. was for us the most economic</p>	<p style="text-align: right;">Page 85</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 Q. What is this document?</p> <p>3 A. This is an order confirmation</p> <p>4 coming from O.W. Bunker Germany to Hapag-Lloyd</p> <p>5 confirming the bunker deal for the SEASpan</p> <p>6 HAMBURG at Tacoma.</p> <p>7 Q. Just like with the SANTA ROBERTA,</p> <p>8 O.W. Bunker Germany is the seller?</p> <p>9 A. Yes.</p> <p>10 Q. And Hapag-Lloyd AG is the buyer?</p> <p>11 A. Yes.</p> <p>12 Q. The same remarks "HALO GCT2007</p> <p>13 shall apply" are listed on page 96?</p> <p>14 A. Yes.</p> <p>15 Q. Norton Lilly is being used as a</p> <p>16 port agent?</p> <p>17 A. Right.</p> <p>18 Q. On page 95 Mr. Selmer writes to</p> <p>19 Mr. Gaus "Dear Lukas, thank you for your</p> <p>20 support."</p> <p>21 Do you have an understanding of</p> <p>22 what he means by that?</p> <p>23 A. To receive the offer. Sorry, to</p> <p>24 receive the order.</p> <p>25 (Kock Exhibit 21, Document Bates</p>

22 (Pages 82 to 85)

<p style="text-align: right;">Page 86</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 stamped HPL-USOT pages 105 and HPL-USOT 106,</p> <p>3 marked for identification.)</p> <p>4 Q. We've marked as Exhibit 21 an email</p> <p>5 Bates stamped HPL-USOT pages 105 to 106. Have</p> <p>6 you seen this email before?</p> <p>7 A. Yes.</p> <p>8 Q. What is this email?</p> <p>9 A. This is an information back to the</p> <p>10 local agent, Norton Lilly, and the vessel, and</p> <p>11 the people in the stowage center, as well as to</p> <p>12 the bunker surveyor informing them about the</p> <p>13 done stem, that there will be 2,900 for the</p> <p>14 SEASpan HAMBURG and at Tacoma to coordinate the</p> <p>15 supplier.</p> <p>16 (Kock Exhibit 22, Document Bates</p> <p>17 stamped HPL-USOT 113 and HPL-USOT 114, marked</p> <p>18 for identification.)</p> <p>19 Q. Marked as Exhibit 22 an email with</p> <p>20 attachment, Bates labeled HPL-USOT 113 and 114.</p> <p>21 Have you seen this document before?</p> <p>22 A. Yes.</p> <p>23 Q. What is this document?</p> <p>24 A. This is an email from the SEASpan</p> <p>25 HAMBURG after sending to the responsible</p>	<p style="text-align: right;">Page 88</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 Manager, Master, Officers or crew or agents for</p> <p>3 the Owner Or Manager."</p> <p>4 Have you seen stamps like this</p> <p>5 before in the course of your work at</p> <p>6 Hapag-Lloyd?</p> <p>7 A. Occasionally.</p> <p>8 Q. What is the effect of a stamp like</p> <p>9 this?</p> <p>10 MR. KEOUGH: Objection.</p> <p>11 MR. FERNANDEZ: Objection.</p> <p>12 A. For our department, I don't see</p> <p>13 any.</p> <p>14 (Kock Exhibit 23, Document Bates</p> <p>15 stamped HPL-USOT 24, marked for identification.)</p> <p>16 Q. We have marked as Exhibit 23 a</p> <p>17 document Bates labeled HPL-USOT 24. Have you</p> <p>18 seen this document before?</p> <p>19 A. Yes.</p> <p>20 Q. What is this document?</p> <p>21 A. This is the invoice from O.W.</p> <p>22 Hamburg to Hapag-Lloyd for the supply of fuel</p> <p>23 oil at Tacoma.</p> <p>24 Q. The invoice from O.W. Germany to</p> <p>25 Hapag-Lloyd?</p>
<p style="text-align: right;">Page 87</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 purchaser confirming the receipt of 2900 tons</p> <p>3 fuel oil at Tacoma on the 16th of October 2014.</p> <p>4 Q. This email went to the Hapag-Lloyd</p> <p>5 bunker purchasing department?</p> <p>6 A. Yes, as well as to the technical</p> <p>7 department. I think it might be a</p> <p>8 superintendent department of SEASpan had been</p> <p>9 copied.</p> <p>10 Q. On the face of the page, on page</p> <p>11 114, what is the attachment?</p> <p>12 A. This is the attachment to that</p> <p>13 email.</p> <p>14 Q. Do you have any understanding of</p> <p>15 the large stamp marked "SEASpan HAMBURG Bunker</p> <p>16 Receipt"?</p> <p>17 A. No, this stamp has not been created</p> <p>18 by our department. It looks like this stamp has</p> <p>19 been created by the vessel's owner or manager.</p> <p>20 Q. It reads that, "Bunkers are</p> <p>21 received onboard and taken into custody for and</p> <p>22 on behalf of Charterers only for the account of</p> <p>23 the Charterer. No lien" it's illegible for the</p> <p>24 next two words "or accountability for the supply</p> <p>25 and/or payment is accepted by the Owner or</p>	<p style="text-align: right;">Page 89</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 A. Right.</p> <p>3 Q. There are again some stamps on the</p> <p>4 invoice. Was this booked by Hapag-Lloyd's</p> <p>5 accounting department in October 28th of 2014?</p> <p>6 A. Yes. You like the name. It has</p> <p>7 been booked by the accounting manager,</p> <p>8 Mrs. Yaylaoglu. I think she's coming from</p> <p>9 Turkey.</p> <p>10 Q. Do you know whether this invoice</p> <p>11 was paid by Hapag-Lloyd to O.W. Germany?</p> <p>12 A. Yes.</p> <p>13 Q. Yes, it was paid?</p> <p>14 A. No. Wait. Due date November 15th.</p> <p>15 I strongly believe we have stopped it.</p> <p>16 Q. Ordinarily the terms of payment are</p> <p>17 within 30 days from the date of delivery listed</p> <p>18 there on the invoice?</p> <p>19 A. Right, providing the invoice is</p> <p>20 coming within 14 days or 15 days after supply.</p> <p>21 If not, we are paying 15 days after receipt of</p> <p>22 the invoice.</p> <p>23 MR. MALONEY: I think it's a good</p> <p>24 time for a lunch break.</p> <p>25 (Lunch recess taken at 12:54 p.m.)</p>

23 (Pages 86 to 89)

Page 90	Page 92
<p>1 Norbert Kock (1-19-16)</p> <p>2 (Resumed 1:48 p.m.)</p> <p>3 (Kock Exhibit 24, Document Bates</p> <p>4 stamped HPL-USOT 00115, marked for</p> <p>5 identification.)</p> <p>6 (Kock Exhibit 25, Document Bates</p> <p>7 stamped HPL-USOT pages 58 through HPL-USOT 60,</p> <p>8 marked for identification.)</p> <p>9 (Kock Exhibit 26, Document Bates</p> <p>10 stamped HPL-USOT pages 128 to HPL-USOT 129,</p> <p>11 marked for identification.)</p> <p>12 (Kock Exhibit 27, Document Bates</p> <p>13 stamped HPL-USOT page 78, marked for</p> <p>14 identification.)</p> <p>15 (Kock Exhibit 28, Document Bates</p> <p>16 stamped HPL-USOT 126, marked for</p> <p>17 identification.)</p> <p>18 (Kock Exhibit 29, Document Bates</p> <p>19 stamped HPL-USOT 189 to HPL-USOT 192, marked for</p> <p>20 identification.)</p> <p>21 (Kock Exhibit 30, Document Bates</p> <p>22 stamped, marked for identification.)</p> <p>23 (Kock Exhibit 31, Document Bates</p> <p>24 stamped HPL-USOT 199 through HPL-USOT 200,</p> <p>25 marked for identification.)</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 Q. I hand you a document that we've</p> <p>3 marked as Exhibit 25, it's labeled HPL-USOT</p> <p>4 pages 58 through 60.</p> <p>5 Have you seen this document before?</p> <p>6 A. Yes.</p> <p>7 Q. What is this document?</p> <p>8 A. This is the written purchase order</p> <p>9 to our product center at O.W. Bunker Germany</p> <p>10 GMBH.</p> <p>11 Q. Is this document generated in the</p> <p>12 ordinary course of Hapag-Lloyd's business?</p> <p>13 A. Yes.</p> <p>14 Q. Was it generated at or near the</p> <p>15 time that the order was placed?</p> <p>16 A. Yes.</p> <p>17 Q. Is it the regular practice of the</p> <p>18 bunker purchasing department to generate</p> <p>19 purchase orders such as these?</p> <p>20 A. Yes.</p> <p>21 Q. I'm handing you a document that</p> <p>22 I've marked as Exhibit 26, it's labeled HPL-USOT</p> <p>23 pages 128 to 129. Have you seen this document</p> <p>24 before?</p> <p>25 A. Yes.</p>
Page 91	Page 93
<p>1 Norbert Kock (1-19-16)</p> <p>2 MR. MALONEY: We're back from</p> <p>3 lunch.</p> <p>4 Q. I'm going to hand you a document</p> <p>5 marked as Kock Exhibit 24, document Bates</p> <p>6 labeled HPL-USOT 00115.</p> <p>7 Is this email and attachment from</p> <p>8 the SOFIA EXPRESS?</p> <p>9 A. Yes.</p> <p>10 Q. What does this document refer to?</p> <p>11 A. It's a bunker requisition for the</p> <p>12 Port of Tacoma on the 29th of October, coming</p> <p>13 from the vessel's master.</p> <p>14 Q. Do you know, was the SOFIA EXPRESS</p> <p>15 owned by Hapag-Lloyd?</p> <p>16 A. This is a Hapag-Lloyd vessel.</p> <p>17 Q. Was Hapag also operating that</p> <p>18 vessel?</p> <p>19 A. Yes.</p> <p>20 Q. In October of 2014?</p> <p>21 A. Yes.</p> <p>22 Q. This email went to the bunker</p> <p>23 purchasing department?</p> <p>24 A. Yes. To the requirement section,</p> <p>25 3.</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 Q. What is this document?</p> <p>3 A. This is the bunker receipt the</p> <p>4 SOFIA EXPRESS sent us after receiving the bunker</p> <p>5 replenishment at Tacoma on October 29, 2014.</p> <p>6 Q. The email is directed to Ship</p> <p>7 Management Fuel. What is Ship Management Fuel?</p> <p>8 A. Ship Management Fuel is our ship</p> <p>9 management department.</p> <p>10 Q. At Hapag-Lloyd?</p> <p>11 A. At Hapag-Lloyd.</p> <p>12 Q. Is that different from the bunker</p> <p>13 requirement department?</p> <p>14 A. It's a neighbor department of our</p> <p>15 purchasing department.</p> <p>16 Q. I'm going to hand you a document</p> <p>17 that I've marked as Exhibit 27, it's labeled</p> <p>18 HPL-USOT page 78.</p> <p>19 My question again is have you seen</p> <p>20 this document before?</p> <p>21 A. Yes.</p> <p>22 Q. And what is this document?</p> <p>23 A. This is an invoice issued by O.W.</p> <p>24 Bunker to Hapag-Lloyd AG for the supply of fuel</p> <p>25 oil in the Port of Tacoma to the SOFIA EXPRESS.</p>

24 (Pages 90 to 93)

<p style="text-align: right;">Page 94</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 Q. It's dated November 1st of 2014?</p> <p>3 A. Yes.</p> <p>4 Q. This copy is a little bit hard to</p> <p>5 read. Underneath the line items for quantity</p> <p>6 supplied and quality there's a notation that</p> <p>7 it's a "non-taxable delivery abroad."</p> <p>8 Do you have an understanding of</p> <p>9 what that means?</p> <p>10 A. No.</p> <p>11 Q. I can't read the handwriting on the</p> <p>12 right. Do you have any understanding of what</p> <p>13 that notation refers to?</p> <p>14 A. It looks like that a claim has been</p> <p>15 issued on this supplier and the payment, the</p> <p>16 normal payment run has been stopped due to this</p> <p>17 claim.</p> <p>18 Q. Are you referring to a claim with</p> <p>19 respect to the quantity or quality of fuel</p> <p>20 delivered, or something else?</p> <p>21 A. In this specific case I can't</p> <p>22 remember.</p> <p>23 Q. It's your understanding that this</p> <p>24 invoice has not been paid, correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 96</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 or liters or cubic meters, and if the product</p> <p>3 density is analyzed lighter than the given</p> <p>4 density on the bunker delivery receipt, you will</p> <p>5 calculate a loss to the shipowner because this</p> <p>6 is a pure commercial claim.</p> <p>7 Q. Would the bunker purchasing</p> <p>8 department ever send a claim like this to the</p> <p>9 local physical supplier?</p> <p>10 A. No. We have no relation to this</p> <p>11 physical supplier, we have no contract with</p> <p>12 them.</p> <p>13 Q. The information on page 127 details</p> <p>14 the claim that Ms. Niemeyer made?</p> <p>15 A. Yes. This is the fuel survey</p> <p>16 report we received from the attending surveyor</p> <p>17 who was at the scene witnessing the quantity</p> <p>18 determination onboard of the bunker barge, and</p> <p>19 witnessing also the sample drawing, and then</p> <p>20 arranging later on the analysis here.</p> <p>21 Q. Does the review of that email</p> <p>22 refresh your recollection as to whether that</p> <p>23 refers to the claim that's indicated on the</p> <p>24 invoice?</p> <p>25 A. It looks like, yes.</p>
<p style="text-align: right;">Page 95</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 Q. I hand you a document that I've</p> <p>3 marked as Exhibit 28, Bates labeled HPL-USOT</p> <p>4 126. This is an email from Dorit Niemeyer to</p> <p>5 Mr. Selmer, dated November 5th of 2014, and the</p> <p>6 exhibit goes on to page 127 with its attachment.</p> <p>7 I'll just ask you to take a look at</p> <p>8 that document?</p> <p>9 A. Mrs. Niemeyer issued a claim.</p> <p>10 Q. Does this --</p> <p>11 A. Based on a different analyzed</p> <p>12 product density compared to the given density on</p> <p>13 the bunker delivery receipt, so we had a short</p> <p>14 delivery.</p> <p>15 Q. What is a short delivery?</p> <p>16 A. A product density, I mean, the</p> <p>17 delivered metric tons will be calculated based</p> <p>18 on a delivered volume, which has a delivery</p> <p>19 temperature and a specific product density.</p> <p>20 Based on these three items you can calculate</p> <p>21 metric tons which will be invoiced from a</p> <p>22 volume, because the bunker barge while alongside</p> <p>23 the vessel can be weighted.</p> <p>24 You cannot only do a volume</p> <p>25 measurement, you measure the barrels or gallons</p>	<p style="text-align: right;">Page 97</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 Q. I'm going to hand you a document</p> <p>3 that I've marked as Exhibit 29, it's Bates</p> <p>4 labeled HPL-USOT 189 to 192.</p> <p>5 This is an email from Mr. Selmer to</p> <p>6 Ms. Niemeyer concerning the VIENNA EXPRESS. Do</p> <p>7 you see that?</p> <p>8 A. Yes.</p> <p>9 Q. The email is in German. Does it</p> <p>10 read, in sum and substance, "Thank you for the</p> <p>11 nomination. Have a beautiful sunny day"?</p> <p>12 A. Right.</p> <p>13 Q. Does this email attach the sales</p> <p>14 order confirmation between Hapag-Lloyd and O.W.</p> <p>15 Germany?</p> <p>16 A. Yes.</p> <p>17 Q. O.W. Germany got the nomination for</p> <p>18 the VIENNA EXPRESS?</p> <p>19 A. Yes.</p> <p>20 Q. O.W. Germany is listed here as the</p> <p>21 seller on the transaction?</p> <p>22 A. Yes.</p> <p>23 Q. The payment terms and terms and</p> <p>24 conditions remarks are the same as the previous</p> <p>25 transactions we've reviewed?</p>

25 (Pages 94 to 97)

<p style="text-align: right;">Page 98</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 A. Yes.</p> <p>3 Q. I hand you a document that I've</p> <p>4 marked as Exhibit 30, Bates labeled HPL-USOT</p> <p>5 pages 182 to 184. Have you seen this document</p> <p>6 before?</p> <p>7 A. Yes.</p> <p>8 Q. What is this document?</p> <p>9 A. This is the official written order</p> <p>10 from Hapag-Lloyd to O.W. Bunker Germany</p> <p>11 confirming the order for VIENNA EXPRESS,</p> <p>12 2,700 tons of fuel oil at the Port of Tacoma on</p> <p>13 October 16, 2014.</p> <p>14 Q. I hand you a document that I've</p> <p>15 marked as Exhibit 31, Bates labeled HPL-USOT 199</p> <p>16 through 200.</p> <p>17 Do you know who Victoria Bohn is?</p> <p>18 A. I don't know Victoria Bohn. It</p> <p>19 looks like she's working in or she worked at the</p> <p>20 O.W. Bunker Hamburg department for issuing</p> <p>21 invoices, though she's addressing this mail here</p> <p>22 to our accounting department, Mrs. Sakowski:</p> <p>23 "Good morning, Mrs. Sakowski.</p> <p>24 Attached you received invoice and delivery note</p> <p>25 for the bunker delivery of VIENNA EXPRESS in</p>	<p style="text-align: right;">Page 100</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 record.</p> <p>3 (Off the record.)</p> <p>4 (Exhibit 33, Hapag-Lloyd Terms and</p> <p>5 Conditions of Purchasing, Bates stamped HPL-OMS</p> <p>6 1 through HPL-USOT 5, marked for</p> <p>7 identification.)</p> <p>8 (Exhibit 34, Email and attachments</p> <p>9 Bates stamped HPL-OMS 00057 through HPL-OMS</p> <p>10 00058, marked for identification.)</p> <p>11 (Exhibit 35, Document Bates stamped</p> <p>12 ING HL 2718 through ING HL 20, marked for</p> <p>13 identification.)</p> <p>14 (Exhibit 36, Document Bates stamped</p> <p>15 HPL-OMS 28 through HPL-OMS 30, marked for</p> <p>16 identification.)</p> <p>17 (Exhibit 37, Document Bates stamped</p> <p>18 ING HL 32 and ING HL 33, marked for</p> <p>19 identification.)</p> <p>20 (Exhibit 38, Document Bates stamped</p> <p>21 HPL-OMS 63 through HPL-OMS 69, marked for</p> <p>22 identification.)</p> <p>23 (Exhibit 39, Document Bates stamped</p> <p>24 HPL-OMS 42 and HPL-OMS 43, marked for</p> <p>25 identification.)</p>
<p style="text-align: right;">Page 99</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 Tacoma on October 18, 2014. The original</p> <p>3 documents will follow by courier."</p> <p>4 Q. The attachment to this email on</p> <p>5 page 200, is that the invoice from O.W. Germany</p> <p>6 to Hapag-Lloyd?</p> <p>7 A. Yes.</p> <p>8 Q. Again, it was booked on October 29,</p> <p>9 2014 by Hapag-Lloyd's accounting department?</p> <p>10 A. Yes.</p> <p>11 Q. This invoice also was not paid?</p> <p>12 A. Not paid, the security was issued.</p> <p>13 (Kock Exhibit 32, Document Bates</p> <p>14 stamped HPL-USOT 197 to HPL-USOT 198, marked for</p> <p>15 identification.)</p> <p>16 Q. We have marked as Exhibit 32 a</p> <p>17 document Bates labeled HPL-USOT 197 to 198.</p> <p>18 Have you seen this document before, sir?</p> <p>19 A. Yes.</p> <p>20 Q. What is this document?</p> <p>21 A. This is an email to our requirement</p> <p>22 section 3, as well as to our ship management</p> <p>23 department, confirming the bunker delivery at</p> <p>24 Tacoma on 18/10/2014.</p> <p>25 MR. MALONEY: Let's go off the</p>	<p style="text-align: right;">Page 101</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 MR. MALONEY: We've taken a short</p> <p>3 break just to get some additional documents</p> <p>4 marked, and we're going to turn now to the</p> <p>5 SIDNEY EXPRESS and DERBY D.</p> <p>6 Q. I'm handing you a document, sir,</p> <p>7 that I've marked as Exhibit 33, it's HPL-OMS</p> <p>8 pages 1 through 5. Do you recognize this</p> <p>9 document?</p> <p>10 A. This is a set of Hapag-Lloyd Terms</p> <p>11 and Conditions of Purchasing.</p> <p>12 Q. This was produced in connection</p> <p>13 with the O'Rourke Marine Services action, case</p> <p>14 number 14-cv-10027.</p> <p>15 Do you have any understanding of</p> <p>16 whether there were different terms and</p> <p>17 conditions that applied to the SIDNEY EXPRESS</p> <p>18 and the DERBY D as to the other four vessels we</p> <p>19 have just reviewed?</p> <p>20 A. No.</p> <p>21 Q. What is your understanding?</p> <p>22 A. We had a set of terms and</p> <p>23 conditions negotiated with O.W. Bunker for the</p> <p>24 supply of fuel oil and distillates in Rotterdam</p> <p>25 and Antwerp in the late 2013, which was also</p>

<p style="text-align: right;">Page 106</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 securance (sic) has been issued.</p> <p>3 Q. Security has been issued in the</p> <p>4 court in these actions?</p> <p>5 A. Yes.</p> <p>6 Q. Was the DERBY D a vessel that was</p> <p>7 owned by Hapag-Lloyd or chartered, on charter to</p> <p>8 Hapag?</p> <p>9 A. This was a charter to Hapag-Lloyd.</p> <p>10 Q. Do you know who owned the DERBY D</p> <p>11 in 2014?</p> <p>12 A. No.</p> <p>13 Q. Do you know whether the charter was</p> <p>14 governed by a Charter Party?</p> <p>15 A. It must be governed by a Charter</p> <p>16 Party, because a Charter Party is a contract</p> <p>17 between the vessel's owner and the charterer.</p> <p>18 Q. I show you a document that I have</p> <p>19 marked as Exhibit 38, it's labeled HPL-OMS 63</p> <p>20 through 69.</p> <p>21 MR. MALONEY: I'll note for the</p> <p>22 record that there is a designation, an entire</p> <p>23 Bates stamped document number HPL-OMS 63 through</p> <p>24 122 is hereby deemed confidential.</p> <p>25 MR. DEHART: Under the terms of the</p>	<p style="text-align: right;">Page 108</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 not our department's business, so I'm not in</p> <p>3 that stuff.</p> <p>4 Q. On page 64 at line 39, is it fair</p> <p>5 to say that the charterers were responsible for</p> <p>6 the purchasing of fuel while it was on charter?</p> <p>7 A. Based on this definition here in</p> <p>8 this contract, yes.</p> <p>9 MR. FERNANDEZ: Objection to --</p> <p>10 just objection.</p> <p>11 Q. I'm going to hand you a document</p> <p>12 that I've marked as Exhibit 39, and it's labeled</p> <p>13 HPL-OMS pages 42 and 43. Have you seen this</p> <p>14 document before?</p> <p>15 A. Yes.</p> <p>16 Q. Is this another inquiry to the</p> <p>17 market?</p> <p>18 A. Yes.</p> <p>19 Q. None of the recipients are</p> <p>20 identified. Is there a reason why these</p> <p>21 inquiries are sent without a listing of who is</p> <p>22 to receive them?</p> <p>23 A. Yeah. The recipients will be only</p> <p>24 blank carbon copied to not allow them who is</p> <p>25 participating in this inquiry.</p>
<p style="text-align: right;">Page 107</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 confidentiality agreement it applies to all</p> <p>3 these actions?</p> <p>4 Q. Have you seen this document before,</p> <p>5 sir?</p> <p>6 A. I can't remember.</p> <p>7 Q. Is this a document that would have</p> <p>8 been negotiated by your chartering department?</p> <p>9 A. Yes.</p> <p>10 Q. There on page 69, the last page of</p> <p>11 the document, are those Mr. Petersen and</p> <p>12 Mr. Hards' signatures?</p> <p>13 A. Yes.</p> <p>14 Q. Did you know or do you know who</p> <p>15 owns the DERBY D?</p> <p>16 A. No.</p> <p>17 Q. On page 1 of this document it says</p> <p>18 the Charter Party was made and concluded in</p> <p>19 Hamburg between Containers Lines Inc., Monrovia,</p> <p>20 and Hapag-Lloyd.</p> <p>21 Do you have any reason to doubt</p> <p>22 whether Containers Lines Inc. are the owners of</p> <p>23 this vessel, the DERBY D?</p> <p>24 MR. FERNANDEZ: Objection.</p> <p>25 A. This is not our business. This is</p>	<p style="text-align: right;">Page 109</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 Q. To not --</p> <p>3 A. We are not interested to allow them</p> <p>4 to know who is competing to maybe contact each</p> <p>5 other to manipulate prices.</p> <p>6 Q. There's no reference to any local</p> <p>7 physical suppliers on page 42 and 43, is there?</p> <p>8 A. No.</p> <p>9 Q. Do you know if this inquiry was</p> <p>10 sent directly to O'Rourke Marine Services?</p> <p>11 A. This inquiry has not been sent to</p> <p>12 O'Rourke.</p> <p>13 Q. Did Hapag-Lloyd have any</p> <p>14 relationship with O'Rourke Marine Services</p> <p>15 directly?</p> <p>16 A. No, no relationship directly. We</p> <p>17 only have relationship to sellers accepting our</p> <p>18 terms and conditions of purchasing.</p> <p>19 Q. O.W. Germany accepted Hapag-Lloyd's</p> <p>20 terms and conditions?</p> <p>21 A. Yes.</p> <p>22 Q. Did U.S. Oil Trading accept</p> <p>23 Hapag-Lloyd's terms and conditions?</p> <p>24 MR. KEOUGH: Objection.</p> <p>25 A. We had no contact with these guys.</p>

28 (Pages 106 to 109)

<p style="text-align: right;">Page 110</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 Q. Did O'Rourke Marine Services accept</p> <p>3 the terms and conditions?</p> <p>4 A. We had no direct contact to this</p> <p>5 company.</p> <p>6 Q. You can put that aside.</p> <p>7 (Kock Exhibit 40, Document Bates</p> <p>8 stamped HPL-OMS 21 through HPL-OMS 22, marked</p> <p>9 for identification.)</p> <p>10 Q. I have marked as Exhibit 40 a</p> <p>11 document labeled HPL-OMS pages 21 through 22.</p> <p>12 Do you recognize this document?</p> <p>13 A. Yes.</p> <p>14 Q. What is it?</p> <p>15 A. This is a sales order confirmation</p> <p>16 coming from O.W. Bunker Germany confirming the</p> <p>17 sale of 50 tons of marine gas oil, 0.1 percent</p> <p>18 sulfur, at the Port of Houston, delivery on</p> <p>19 November 5, 2014.</p> <p>20 Q. And again, the seller is O.W.</p> <p>21 Bunker Germany in this document?</p> <p>22 A. Yes.</p> <p>23 Q. And the purchaser is Hapag-Lloyd</p> <p>24 AG?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 112</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 Q. I've marked as Exhibit 41 a</p> <p>3 document labeled HPL-OMS pages 18 through 20.</p> <p>4 Have you seen this document before?</p> <p>5 A. Yes.</p> <p>6 Q. What is this document?</p> <p>7 A. This is a written order from</p> <p>8 Hapag-Lloyd, Mr. Lukas Gaus, to O.W. Bunker</p> <p>9 Germany GMBH, confirming the purchase of 50 tons</p> <p>10 of marine distillate DMA 0.1 percent sulfur at</p> <p>11 the Port of Houston, delivery to take place on</p> <p>12 November 5, 2014.</p> <p>13 Q. Do you see in the second paragraph</p> <p>14 it says that "All fuel delivered to Hapag-Lloyd</p> <p>15 AG as well as to Hapag-Lloyd Kreuzfahrten ISO</p> <p>16 8217 Fourth Edition 2010," it says 2010(E)?</p> <p>17 A. Right.</p> <p>18 Q. Is it the 2010(E) quality standard</p> <p>19 that applies to this transaction?</p> <p>20 A. This is a standard text in this</p> <p>21 contract. In this case the purchaser did not</p> <p>22 correct down to 2005 spec that O.W. was</p> <p>23 confirming to us.</p> <p>24 Q. So would the sales order</p> <p>25 confirmation govern that question?</p>
<p style="text-align: right;">Page 111</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 Q. Under your remarks it says "HALO</p> <p>3 GTC2005(E) shall apply"?</p> <p>4 A. It looks like a typo to me.</p> <p>5 Q. Why do you say that?</p> <p>6 A. Because in all previous order</p> <p>7 confirmations were relating to the GTCs of 2007,</p> <p>8 which was in fact 2006.</p> <p>9 Q. That was when the relationship with</p> <p>10 O.W. Bunker Germany commenced?</p> <p>11 A. Yes.</p> <p>12 Q. The line above says "All per ISO</p> <p>13 8217 2005(E)." Is it possible that someone</p> <p>14 transposed the quality standard and the terms</p> <p>15 and conditions?</p> <p>16 A. It looks like because the E is --</p> <p>17 THE INTERPRETER: In parentheses.</p> <p>18 A. Yeah.</p> <p>19 Q. Does the quality standard</p> <p>20 designation look correct to you?</p> <p>21 A. Yes. The ISO 8217 2005 exists,</p> <p>22 it's an old version.</p> <p>23 (Kock Exhibit 41, Document Bates</p> <p>24 stamped HPL-OMS 18 through HPL-OMS 20, marked</p> <p>25 for identification.)</p>	<p style="text-align: right;">Page 113</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 A. Yes.</p> <p>3 Q. Because this document is</p> <p>4 automatically generated by Hapag-Lloyd's</p> <p>5 systems?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know how many physical</p> <p>8 suppliers are based in Houston, Texas, physical</p> <p>9 suppliers of fuel?</p> <p>10 A. No.</p> <p>11 (Kock Exhibit 42, Document Bates</p> <p>12 stamped HPL-OMS page 45, marked for</p> <p>13 identification.)</p> <p>14 Q. Marked as Exhibit 42 a document</p> <p>15 labeled HPL-OMS page 45. Have you seen this</p> <p>16 document before?</p> <p>17 A. Yes.</p> <p>18 Q. And do you know what it refers to?</p> <p>19 A. It refers to the delivery of the</p> <p>20 order of Mr. Jonas Hanke to O.W. Germany for</p> <p>21 arrange to supply of marine distillates to the</p> <p>22 DERBY D in Houston on November 5th.</p> <p>23 I think this is the covering email</p> <p>24 here to that document number 40 we discussed</p> <p>25 earlier. This is a covering email here for the</p>

29 (Pages 110 to 113)

<p style="text-align: right;">Page 114</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 order confirmation for the Exhibit Number 40.</p> <p>3 Q. What you're saying is that the</p> <p>4 second email below in this email chain from</p> <p>5 Mr. Selmer refers to a sales order confirmation,</p> <p>6 and that sales order confirmation appears to be</p> <p>7 the document we've marked as Exhibit 40?</p> <p>8 A. Yeah, because also this says order</p> <p>9 number of O.W. similar. They are referring to</p> <p>10 the sales order confirmation number 1980-28364,</p> <p>11 which is similar to this one here.</p> <p>12 Q. So it's your testimony that the</p> <p>13 sales order number on Exhibit 40 is 119-28364?</p> <p>14 A. Yes.</p> <p>15 Q. The sales order confirmation number</p> <p>16 on Exhibit 42 also refers to number 119-283364?</p> <p>17 A. Yes.</p> <p>18 Q. Mr. Selmer writes to Mr. Hanke</p> <p>19 "supply by truck, do you know what that refers</p> <p>20 to"?</p> <p>21 A. To the supply of the ordered</p> <p>22 50 metric tons of marine distillates or marine</p> <p>23 gas oil at Houston. So the supply has been</p> <p>24 arranged by tank trucks and not by barge.</p> <p>25 Q. Hapag-Lloyd also received an</p>	<p style="text-align: right;">Page 116</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 A. It was the beginning of November</p> <p>3 when it was in the newspaper.</p> <p>4 Q. What do you remember about that?</p> <p>5 A. That we received a newspaper</p> <p>6 article announcing that there will be trouble,</p> <p>7 they might have problems to maintain supplies.</p> <p>8 That's when we contacted O.W. Germany and there</p> <p>9 it was they sold the assets of Singapore, the</p> <p>10 Singapore products company.</p> <p>11 Q. Did you have a call with someone at</p> <p>12 O.W. Germany?</p> <p>13 A. We tried to make several calls with</p> <p>14 O.W. Germany, but it was difficult at that time</p> <p>15 to get through to reach somebody giving us clear</p> <p>16 information.</p> <p>17 Q. Did you have at least one</p> <p>18 discussion with them where they discussed</p> <p>19 Singapore?</p> <p>20 A. This was not kind enough of a</p> <p>21 discussion, it was always a very fast speak</p> <p>22 because they were not really involved also in</p> <p>23 Hamburg, they had problems to really disclose or</p> <p>24 explain what's going on.</p> <p>25 Q. What happened next?</p>
<p style="text-align: right;">Page 115</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 invoice for this supply from O.W. Germany, is</p> <p>3 that right?</p> <p>4 A. Yes.</p> <p>5 (Kock Exhibit 43, Document Bates</p> <p>6 stamped ING HL 270015, marked for</p> <p>7 identification.)</p> <p>8 Q. I would like to hand you a document</p> <p>9 that we've marked as Exhibit 43 labeled ING HL</p> <p>10 270015. Are you familiar with this document?</p> <p>11 A. No. No. I can't remember.</p> <p>12 Q. This document is not from</p> <p>13 Hapag-Lloyd's files, is it? It was produced by</p> <p>14 ING Bank N.V..</p> <p>15 A. I don't know. This looks strange</p> <p>16 to me because of that Danish stamp here,</p> <p>17 "BOGFORT." I've never seen this before, I can't</p> <p>18 remember.</p> <p>19 Q. Okay. You can put that aside. Do</p> <p>20 you know whether O.W. Germany was paid for the</p> <p>21 fuel supplied to the DERBY D?</p> <p>22 A. No, I don't know.</p> <p>23 Q. When did you become aware that O.W.</p> <p>24 Germany, or the O.W. Bunker Group, was</p> <p>25 experiencing any financial distress?</p>	<p style="text-align: right;">Page 117</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 A. We stopped, we stopped paying</p> <p>3 invoices and we tried to, because we understand</p> <p>4 at that time that they were no longer able to</p> <p>5 deliver also our contracts in Rotterdam and</p> <p>6 Antwerp, so we immediately tried to find other</p> <p>7 sellers to deliver instead.</p> <p>8 Q. Did you receive any communications</p> <p>9 from local physical suppliers?</p> <p>10 MR. FERNANDEZ: Objection.</p> <p>11 A. I can't remember.</p> <p>12 Q. Did you receive any threats to</p> <p>13 arrest vessels owned or chartered by</p> <p>14 Hapag-Lloyd?</p> <p>15 A. Could you please repeat it?</p> <p>16 Q. Did Hapag-Lloyd receive any threats</p> <p>17 to arrest vessels owned or chartered by</p> <p>18 Hapag-Lloyd after the insolvency?</p> <p>19 MR. FERNANDEZ: Objection.</p> <p>20 A. At that time, no, I can't remember.</p> <p>21 It was later.</p> <p>22 Q. Did you receive any communications</p> <p>23 later from local physical suppliers in that</p> <p>24 vein?</p> <p>25 A. Later on we had demands from</p>

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<p style="text-align: right;">Page 118</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 physical suppliers in Antwerp and Rotterdam.</p> <p>3 Q. Only in Rotterdam and Antwerp or</p> <p>4 elsewhere as well?</p> <p>5 MR. FERNANDEZ: Objection.</p> <p>6 A. There was a lot of communication</p> <p>7 going on at that time, I do not have this exact</p> <p>8 amount of communication now, I can't remember</p> <p>9 it. It's in the records, but I can't remember</p> <p>10 it.</p> <p>11 Q. How about with respect to the cases</p> <p>12 that you're appearing for here today, did you</p> <p>13 have any communications with O'Rourke Marine</p> <p>14 Services after the bankruptcy of the O.W. Bunker</p> <p>15 Group?</p> <p>16 MR. FERNANDEZ: Objection.</p> <p>17 A. I can't remember.</p> <p>18 Q. The same question for U.S. Oil</p> <p>19 Trading. Did Hapag-Lloyd have any</p> <p>20 communications with U.S. Oil Trading after the</p> <p>21 bankruptcy of the O.W. Bunker Group?</p> <p>22 MR. FERNANDEZ: Objection.</p> <p>23 A. It could be done via our legal or</p> <p>24 insurance department.</p> <p>25 Q. To your knowledge, no one in the</p>	<p style="text-align: right;">Page 120</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 (Kock Exhibit 44, Notice of Rule</p> <p>3 30(b)(6) Deposition, marked for identification.)</p> <p>4 (Kock Exhibit 45, Notice of Rule</p> <p>5 30(b)(6) Deposition, marked for identification.)</p> <p>6 (Kock Exhibit 46, First Amended</p> <p>7 Complaint For Interpleader and Declaratory</p> <p>8 Judgment, marked for identification.)</p> <p>9 (Kock Exhibit 47, Declaration of</p> <p>10 Norbert Kock, marked for identification.)</p> <p>11 EXAMINATION BY MR. HEILIG:</p> <p>12 Q. Good afternoon, sir. My name is</p> <p>13 Justin Heilig. I represent O.W. Bunker Germany</p> <p>14 in three of the actions pending in New York</p> <p>15 which involve the vessels VIENNA EXPRESS, SOFIA</p> <p>16 EXPRESS, the SANTA ROBERTA, SEASpan HAMBURG, as</p> <p>17 well as the SIDNEY EXPRESS and the DERBY D.</p> <p>18 Please note that when I refer to</p> <p>19 the vessels, plural, I'm referring to those six</p> <p>20 specific vessels unless otherwise noted, okay?</p> <p>21 A. Okay.</p> <p>22 Q. When I refer to the bunker</p> <p>23 transactions I'm speaking about the supply of</p> <p>24 bunker fuel to those six vessels in October of</p> <p>25 2014, okay?</p>
<p style="text-align: right;">Page 119</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 bunker purchasing department received</p> <p>3 communications from U.S. Oil Trading or O'Rourke</p> <p>4 Marine Services after the insolvency of the O.W.</p> <p>5 Bunker Group in early November 2014?</p> <p>6 MR. FERNANDEZ: Objection.</p> <p>7 MR. KEOUGH: Objection.</p> <p>8 A. I don't remember.</p> <p>9 Q. So you have no recollection</p> <p>10 whatsoever of any communications with either</p> <p>11 O'Rourke Marine or U.S. Oil Trading after the</p> <p>12 bankruptcy, is that your testimony?</p> <p>13 MR. FERNANDEZ: Objection.</p> <p>14 A. I would have been or I should have</p> <p>15 been able to look at my records because maybe</p> <p>16 there's something in it if it had been passed to</p> <p>17 our legal department, our insurance department</p> <p>18 to take care of that.</p> <p>19 MR. MALONEY: Those are all the</p> <p>20 questions that I have for you at this time,</p> <p>21 Mr. Kock. Thank you for your time and I'll pass</p> <p>22 the witness.</p> <p>23 (Short recess taken.)</p> <p>24 MR. HEILIG: Mark these as the next</p> <p>25 exhibits.</p>	<p style="text-align: right;">Page 121</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 A. Okay.</p> <p>3 Q. When I refer to USOT I'm referring</p> <p>4 to U.S. Oil Trading, one of the parties to two</p> <p>5 of those actions. When I refer to OMS I'm</p> <p>6 speaking about O'Rourke Marine Services, a party</p> <p>7 to one of those actions, all right?</p> <p>8 A. Um-hum.</p> <p>9 Q. We've been discussing those names</p> <p>10 and vessels throughout the day today, so you</p> <p>11 should already be familiar with them.</p> <p>12 First let me thank you for coming</p> <p>13 all this way from Hamburg to testify today, we</p> <p>14 appreciate it. I'm going to first have you look</p> <p>15 at documents that have been marked as exhibits</p> <p>16 44 and 45, they are the notices of deposition</p> <p>17 issued by O.W. Germany in these actions.</p> <p>18 Sir, have you seen these documents</p> <p>19 before today?</p> <p>20 A. I'm not sure.</p> <p>21 Q. Do you understand that you've been</p> <p>22 designation by Hapag-Lloyd as the corporate</p> <p>23 representative to testify about the topics</p> <p>24 listed in Annex A of both notices?</p> <p>25 A. Yes.</p>

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<p>1 Norbert Kock (1-19-16)</p> <p>2 Q. You can put them aside, we're done</p> <p>3 with them. Earlier I believe you testified that</p> <p>4 Hapag-Lloyd began doing business with O.W.</p> <p>5 Germany in 2007, is that correct?</p> <p>6 A. That's correct.</p> <p>7 Q. So Hapag didn't have any dealings</p> <p>8 with O.W. Germany before 2007?</p> <p>9 A. No.</p> <p>10 Q. Was Hapag aware of O.W. Germany's</p> <p>11 presence in the market before 2007?</p> <p>12 A. Yes.</p> <p>13 Q. Is there a reason why you didn't do</p> <p>14 business with O.W. Germany before that time?</p> <p>15 A. Before that time we've done no</p> <p>16 business with O.W. because the reputation of</p> <p>17 O.W. was a poor reputation in the local market.</p> <p>18 Q. Okay. So by 2007 then, is it fair</p> <p>19 to say O.W. Germany's reputation improved in the</p> <p>20 local market?</p> <p>21 A. For me personally, not really.</p> <p>22 Q. Okay.</p> <p>23 A. But this was different to my</p> <p>24 management.</p> <p>25 Q. So it was management's decision to</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 First Amended Complaint filed by Hapag-Lloyd in</p> <p>3 action 14-cv-9949.</p> <p>4 MR. HEILIG: I should clarify for</p> <p>5 the record that this is the pleading without</p> <p>6 exhibits.</p> <p>7 Q. Sir, have you seen this document</p> <p>8 before today?</p> <p>9 A. I've seen a lot of documents today.</p> <p>10 I'm not sure. I don't think so.</p> <p>11 Q. Did you review any documents to be</p> <p>12 filed by Hapag in these lawsuits before they</p> <p>13 were filed?</p> <p>14 In other words, did you review any</p> <p>15 of the pleadings before they were submitted by</p> <p>16 Hapag's U.S. attorneys to the court?</p> <p>17 A. I was doing testimonies last year</p> <p>18 in writing and I had to review them earlier.</p> <p>19 Q. So you reviewed them for factual</p> <p>20 accuracy?</p> <p>21 MR. FERNANDEZ: Objection. I think</p> <p>22 we're talking about different things, just to be</p> <p>23 fair to the witness. We're on pleadings and I</p> <p>24 think he's referring to maybe his declaration.</p> <p>25 I think you have to be careful with the words</p>
Page 123	Page 125
<p>1 Norbert Kock (1-19-16)</p> <p>2 begin doing business in 2007 with O.W. Germany?</p> <p>3 A. Yes, because O.W. at that time</p> <p>4 reached a position at the market which could not</p> <p>5 be an oversight. They really grow up to real</p> <p>6 big oil trader, bunker trader.</p> <p>7 Q. Okay. I believe you testified</p> <p>8 earlier that as a condition of doing business</p> <p>9 with O.W. Germany, O.W. Germany had to accept</p> <p>10 Hapag's terms and conditions?</p> <p>11 A. Right. This was the kind of my</p> <p>12 personal securant, or securing that we have a</p> <p>13 real plain and sound business case with O.W.</p> <p>14 Germany.</p> <p>15 Q. Okay. So if I understand you</p> <p>16 correctly, the acceptance of Hapag's terms by</p> <p>17 O.W. Germany gave Hapag some feeling of comfort</p> <p>18 or some level of security that they could do</p> <p>19 business --</p> <p>20 A. Confidence.</p> <p>21 Q. Confidence that they could do</p> <p>22 business with O.W. Germany?</p> <p>23 A. Yes.</p> <p>24 Q. Let's take a look at a document</p> <p>25 that has been marked as Exhibit 46, it's the</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 you have.</p> <p>3 MR. HEILIG: Fair enough.</p> <p>4 Q. Let's just take a look at the</p> <p>5 document then. Would you mind looking at page</p> <p>6 5, and specifically paragraph 17?</p> <p>7 A. Yes.</p> <p>8 Q. In reviewing this document now,</p> <p>9 does this refresh your recollection as to</p> <p>10 whether you've seen this document prior to</p> <p>11 today?</p> <p>12 A. Yes. This was the contract we have</p> <p>13 discussed earlier today.</p> <p>14 Q. If we look at the document</p> <p>15 previously marked as Exhibit Number 3, the ARA</p> <p>16 contract. Is this the document that you're</p> <p>17 referring to?</p> <p>18 A. Right.</p> <p>19 MR. FERNANDEZ: Just note my</p> <p>20 continued line of objection with regard to</p> <p>21 pleadings and legal issues. He's in the fuel</p> <p>22 department, so I'm going to have a continuing</p> <p>23 line of objections relative to pleadings and</p> <p>24 anything relative to that type of issue.</p> <p>25 A. In fact, just to make it clear, I</p>

<p style="text-align: right;">Page 126</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 have no understanding about what is a pleading.</p> <p>3 THE WITNESS: Maybe you could</p> <p>4 translate this for me, what is a pleading?</p> <p>5 (Interpreter conferring with the</p> <p>6 witness)</p> <p>7 MR. FERNANDEZ: A lawsuit.</p> <p>8 Q. This document was filed by Hapag</p> <p>9 with the court specifying what their allegations</p> <p>10 are as to the facts and to the relationships of</p> <p>11 the parties, as well as to the relief sought by</p> <p>12 Hapag?</p> <p>13 A. I was not engaged in it.</p> <p>14 Q. Okay. But you understand the</p> <p>15 reference in paragraph 17 is to this ARA</p> <p>16 contract in Exhibit 3?</p> <p>17 A. Yes.</p> <p>18 Q. I believe you testified earlier the</p> <p>19 ARA contract dealt with the Ports of Antwerp,</p> <p>20 Rotterdam, and was it Amsterdam as well?</p> <p>21 A. Amsterdam. May I interrupt?</p> <p>22 Q. Sure.</p> <p>23 A. Because this contract is clearly</p> <p>24 stating Antwerp and Rotterdam, so Amsterdam is</p> <p>25 not included. This is the abbreviation, this is</p>	<p style="text-align: right;">Page 128</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 and that's a reference to this ARA contract.</p> <p>3 So if I understand you correctly,</p> <p>4 the ARA contract does not have any relevance to</p> <p>5 bunker transactions at U.S. ports. So my</p> <p>6 question is, is this still correct, that in the</p> <p>7 normal course of business Hapag would remit</p> <p>8 payment to O.W. Germany for bunker transactions</p> <p>9 taking place at U.S. ports?</p> <p>10 MR. KEOUGH: Objection to the form.</p> <p>11 MR. FERNANDEZ: Objection.</p> <p>12 A. Yes.</p> <p>13 Q. So even though this contract in</p> <p>14 Exhibit 3 might not be relevant, payment would</p> <p>15 still be remitted from Hapag to O.W. Germany for</p> <p>16 bunker transactions for which O.W. Germany</p> <p>17 received the nomination?</p> <p>18 MR. FERNANDEZ: Objection to the</p> <p>19 form.</p> <p>20 MR. KEOUGH: Objection.</p> <p>21 Q. In other words, Hapag would not pay</p> <p>22 a physical supplier directly?</p> <p>23 A. No.</p> <p>24 Q. Never. Okay. Did Hapag ever</p> <p>25 receive invoices directly from the physical</p>
<p style="text-align: right;">Page 127</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 a common abbreviation in North Europe or</p> <p>3 Northwest Europe to say we are talking about</p> <p>4 Antwerp, Rotterdam and Amsterdam, but the</p> <p>5 contract we have been agreed upon was only based</p> <p>6 in Antwerp and Rotterdam.</p> <p>7 Q. So perhaps a better title for the</p> <p>8 document would be AR contract?</p> <p>9 A. Right.</p> <p>10 Q. What relevance does Exhibit 3, the</p> <p>11 ARA contract, what relevance does it have to</p> <p>12 bunker transactions that took place at U.S.</p> <p>13 ports?</p> <p>14 A. No relevance.</p> <p>15 Q. Okay. So that contract does not</p> <p>16 govern the transactions that we've been</p> <p>17 discussing today with respect to the vessels?</p> <p>18 MR. KEOUGH: Objection.</p> <p>19 A. This was the contract based on</p> <p>20 Rotterdam and Antwerp supplies.</p> <p>21 Q. Paragraph 1 the on the same page</p> <p>22 says, "In the normal course of business</p> <p>23 Hapag-Lloyd" and it's abbreviated HLAG "would</p> <p>24 remit payment to O.W. Germany for bunker</p> <p>25 supplied under the Hapag Marine Fuel Contract,"</p>	<p style="text-align: right;">Page 129</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 suppliers for bunker nominations awarded to O.W.</p> <p>3 Germany?</p> <p>4 A. There is a chance that this has</p> <p>5 been done in the course of bankruptcy when we</p> <p>6 had to cover on a very short notice bunker</p> <p>7 deliveries in the Port of Antwerp and Rotterdam.</p> <p>8 Q. Prior to the bankruptcy did that</p> <p>9 ever occur?</p> <p>10 A. No, not prior.</p> <p>11 Q. Let's look at what has been marked</p> <p>12 as Exhibit 47, and this is Mr. Kock's</p> <p>13 Declaration from action 15-cv-6718, which was</p> <p>14 transferred from the U.S. District Court of the</p> <p>15 Western District of Washington to the Southern</p> <p>16 District of New York.</p> <p>17 Sir, do you recognize this</p> <p>18 document?</p> <p>19 A. Yes.</p> <p>20 Q. This is a declaration that you</p> <p>21 signed on behalf of Hapag-Lloyd?</p> <p>22 A. Yes.</p> <p>23 Q. I take it then that you reviewed</p> <p>24 this document for the accuracy of its contents</p> <p>25 before signing?</p>

<p style="text-align: right;">Page 130</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 A. Yes.</p> <p>3 Q. And it's accurate, to the best of</p> <p>4 your knowledge and belief?</p> <p>5 A. Yes.</p> <p>6 Q. Let's take a look at page 2,</p> <p>7 paragraphs 4 and 5; well really 4, 5 and 6. It</p> <p>8 appears that these paragraphs discuss the</p> <p>9 submission of bunker requisitions via email from</p> <p>10 the vessels and then the fuel department, your</p> <p>11 department evaluating those requisitions.</p> <p>12 Does this declaration essentially</p> <p>13 summarize the bunkering process that we</p> <p>14 discussed earlier with Mr. Maloney, ING's</p> <p>15 counsel?</p> <p>16 A. Yes.</p> <p>17 Q. Can you tell me a bit more about</p> <p>18 what goes into the evaluation process discussed</p> <p>19 in paragraph 5 after receipt of a bunker</p> <p>20 requisition from a vessel?</p> <p>21 A. In general, we try to supply on the</p> <p>22 most economic basis our fleet of container</p> <p>23 vessels. We are always trying to have advantage</p> <p>24 of local price differences. So if vessels comes</p> <p>25 to the U.S. East Coast we do not concentrate on</p>	<p style="text-align: right;">Page 132</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 worse price term, because the energy content of</p> <p>3 the fuel is better for the vessels?</p> <p>4 A. Yes, right.</p> <p>5 Q. Would Hapag also take into</p> <p>6 consideration whether a trader would be able to</p> <p>7 supply at multiple ports, as opposed to just one</p> <p>8 port?</p> <p>9 A. This is not our preference.</p> <p>10 Q. In paragraph 5 of your declaration</p> <p>11 you discuss beginning the process of soliciting</p> <p>12 bids for the supply of fuel from various</p> <p>13 traders, and there's a footnote, footnote 1,</p> <p>14 which discusses the distinction between a trader</p> <p>15 and a bunker broker.</p> <p>16 I was wondering if you could just</p> <p>17 describe for me what that distinction is in a</p> <p>18 bit of greater detail?</p> <p>19 A. Yeah, I mean --</p> <p>20 MR. KEOUGH: Objection.</p> <p>21 A. We have a clear understanding about</p> <p>22 the role of a bunker broker and the bunker</p> <p>23 trader, because the bunker broker is just</p> <p>24 knowing a supplier and he's knowing a shipowner</p> <p>25 requiring fuel oil, and he's bringing together</p>
<p style="text-align: right;">Page 131</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 only one port, for example New York, we will</p> <p>3 always include other ports in the chain of the</p> <p>4 vessel's schedule which could be then Halifax,</p> <p>5 North Fork, Savannah.</p> <p>6 We will tender all these ports</p> <p>7 together in one go and then select the most</p> <p>8 economic offer at the specific port, which could</p> <p>9 be then New York or even Halifax or North Fork</p> <p>10 or Savannah, that's what we are evaluating.</p> <p>11 Q. I believe we saw documents earlier</p> <p>12 in which the physicals or the fuel specs were</p> <p>13 provided by O.W. Germany to Hapag-Lloyd for</p> <p>14 Tacoma, Oakland and Los Angeles on the West</p> <p>15 Coast?</p> <p>16 A. Yes.</p> <p>17 Q. That would be the same?</p> <p>18 A. It's the same pattern. It's the</p> <p>19 same pattern in Northwest Europe where we are</p> <p>20 also trying to compare in between Rotterdam,</p> <p>21 Antwerp and Hamburg sometimes.</p> <p>22 Q. If I understand your earlier</p> <p>23 testimony correctly, Hapag will evaluate both</p> <p>24 the price as well as the fuel specs. If it's a</p> <p>25 better fuel spec it might agree to accept a</p>	<p style="text-align: right;">Page 133</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 those parties.</p> <p>3 And then he's cashing in his, what</p> <p>4 is it, margin and stepping back and leaving the</p> <p>5 shipowner together with the physical supplier to</p> <p>6 arranging and agreeing on the business. The</p> <p>7 contract comes together or works together</p> <p>8 between the shipowner, the buyer and the</p> <p>9 physical supplier locally.</p> <p>10 So this is not what we are after</p> <p>11 because we are trying to secure not only the</p> <p>12 quality of the product, but also the legal</p> <p>13 status of the contract, that's why we are just</p> <p>14 working with parties accepting our terms and</p> <p>15 conditions of purchasing.</p> <p>16 So this needs to be -- it could be</p> <p>17 a physical supplier accepting them, but in most</p> <p>18 cases, especially U.S.-based physical suppliers</p> <p>19 are not interested to accept them because they</p> <p>20 might be too sharp for them, so we are taking</p> <p>21 advantage of the services of a bunker trader.</p> <p>22 If the bunker trader is owing the product that's</p> <p>23 what we are demanding, we are expecting that</p> <p>24 he's owning the product.</p> <p>25 MR. FERNANDEZ: Owing?</p>

<p style="text-align: right;">Page 134</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 THE WITNESS: He owns.</p> <p>3 THE INTERPRETER: Owning.</p> <p>4 A. He owns the product and is selling</p> <p>5 it to us on this risk, and based also on his</p> <p>6 invoice.</p> <p>7 Q. Do you know whether it's customary</p> <p>8 for a broker to simply invoice its commission</p> <p>9 for the full selling invoice price for the</p> <p>10 bunker fuel?</p> <p>11 A. What I was experiencing in the past</p> <p>12 was that the invoice was always coming from the</p> <p>13 physical supplier. When we have been doing</p> <p>14 business, we are brokers, long, long ago.</p> <p>15 Q. And the broker would issue its own</p> <p>16 invoice for its commission?</p> <p>17 A. Yeah.</p> <p>18 Q. Let's pose a hypothetical. If O.W.</p> <p>19 Germany were acting as a broker in a transaction</p> <p>20 in which U.S. Oil physically supplied the fuel,</p> <p>21 again, if O.W. Germany were acting as a broker</p> <p>22 U.S. Oil would have issued an invoice to</p> <p>23 Hapag-Lloyd, and O.W. Germany would have issued</p> <p>24 a separate invoice to Hapag-Lloyd for its</p> <p>25 commission?</p>	<p style="text-align: right;">Page 136</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 Q. In paragraph 9, which starts on the</p> <p>3 bottom of page 3 and goes to the top of page 4,</p> <p>4 you discuss an incident where Hapag faced a</p> <p>5 significant claim in the United States in the</p> <p>6 1990s involving a foreign bunker broker.</p> <p>7 Would you mind just explaining a</p> <p>8 bit more about that, that claim and that issue,</p> <p>9 explain its relevance to these transactions here</p> <p>10 today?</p> <p>11 A. The relevance to this or to these</p> <p>12 transactions is to try to explain why we are</p> <p>13 changing the policy from using brokers to using</p> <p>14 traders instead, because at that time we had a</p> <p>15 claim, I think it was on the U.S. West Coast,</p> <p>16 and the fuel was not stable so the vessel had</p> <p>17 experienced severe operational problems.</p> <p>18 They could manage to operate, but</p> <p>19 it was taking additional manpower to clean out</p> <p>20 the filters and to clean up the purification</p> <p>21 plant of that vessel so the vessel could</p> <p>22 maintain the voyage, but only with additional</p> <p>23 manpower, as far as I can remember.</p> <p>24 So we claimed the delivery with the</p> <p>25 physical supplier, I do not recognize, it's too</p>
<p style="text-align: right;">Page 135</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 MR. KEOUGH: Objection to the form.</p> <p>3 A. Probably, yes.</p> <p>4 Q. But that's not what occurred here?</p> <p>5 A. No.</p> <p>6 Q. In footnote 2 of your declaration</p> <p>7 you say you completely disagree with U.S. Oil's</p> <p>8 characterization of O.W. Denmark as a bunker</p> <p>9 broker.</p> <p>10 Again, I believe you've answered</p> <p>11 this from your perspective. From Hapag's</p> <p>12 perspective O.W. Germany was its contractual</p> <p>13 counterparty, correct?</p> <p>14 A. O.W. Germany was our contractual</p> <p>15 counterparty.</p> <p>16 Q. Hapag-Lloyd did not contract with</p> <p>17 O.W. Denmark in these transactions?</p> <p>18 A. Never.</p> <p>19 Q. And O.W. Germany was a trader in</p> <p>20 part because it agreed to A, sell the bunker</p> <p>21 fuel to Hapag-Lloyd; and B, agree to accept</p> <p>22 Hapag-Lloyd's terms and conditions; and C,</p> <p>23 assume the risk for that sale?</p> <p>24 A. That's right.</p> <p>25 MR. KEOUGH: Objection.</p>	<p style="text-align: right;">Page 137</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 long ago, and he did not answer our claim. He</p> <p>3 just stepped back and stopped communicating with</p> <p>4 us.</p> <p>5 Q. Okay. Had they been paid by that</p> <p>6 time?</p> <p>7 A. They had been paid.</p> <p>8 Q. So essentially Hapag had no</p> <p>9 recourse --</p> <p>10 A. The money was out and there was no</p> <p>11 more trigger to motivate them to answer.</p> <p>12 Q. Okay. Paragraph 7 on page 3 you</p> <p>13 state, "O.W. Germany solicited business as</p> <p>14 having the ability to serve as a one-stop shop</p> <p>15 for the sales/supply of fuel to vessels, thereby</p> <p>16 undertaking complete responsibility for all</p> <p>17 aspects of the transaction, including inter alia</p> <p>18 procurement delivery supply quality and</p> <p>19 quantity."</p> <p>20 What did you mean by a one-stop</p> <p>21 shop?</p> <p>22 A. To have one party responsible for</p> <p>23 supply to our vessel.</p> <p>24 Q. Is this --</p> <p>25 A. Not to interact with all these</p>

35 (Pages 134 to 137)

<p style="text-align: right;">Page 138</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 parties which could be an in between.</p> <p>3 Q. Is it fair so say then that Hapag</p> <p>4 did not care what happened downstream of O.W.</p> <p>5 Germany in terms of dealing with subcontractors,</p> <p>6 physical suppliers?</p> <p>7 MR. KEOUGH: Objection.</p> <p>8 A. That's not our business.</p> <p>9 Q. If I understand correctly from what</p> <p>10 you said a few minutes ago, O.W. Germany's</p> <p>11 solicitation of business, as having the ability</p> <p>12 to serve as a one-stop shop, satisfied Hapag's</p> <p>13 upper management that they could begin doing</p> <p>14 business with O.W. Germany in 2007, is that</p> <p>15 correct?</p> <p>16 MR. FERNANDEZ: Objection to the</p> <p>17 form. You can answer the question.</p> <p>18 A. Yes, it seems so.</p> <p>19 Q. So if I understand sort of as a</p> <p>20 synthesis of what you said already, Hapag-Lloyd</p> <p>21 never authorized or pointed O.W. Germany as an</p> <p>22 agent to order fuel on Hapag's behalf, is that</p> <p>23 correct?</p> <p>24 MR. KEOUGH: Objection.</p> <p>25 A. Never.</p>	<p style="text-align: right;">Page 140</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 A. Yes.</p> <p>3 Q. The 2006 version?</p> <p>4 A. Yes.</p> <p>5 Q. And the version attached to</p> <p>6 Exhibit 3?</p> <p>7 A. This is the version which has been</p> <p>8 negotiated with O.W. Bunker during the process</p> <p>9 of negotiating the contract in Rotterdam and</p> <p>10 Antwerp.</p> <p>11 Q. The ARA contract?</p> <p>12 A. The ARA contract.</p> <p>13 Q. Which has no relevance to the</p> <p>14 transactions at issue here in these actions?</p> <p>15 MR. KEOUGH: Objection to the form.</p> <p>16 A. Right.</p> <p>17 Q. So really the version attached to</p> <p>18 Exhibit H 1 are the terms that apply to the</p> <p>19 contracts between Hapag-Lloyd and O.W. Germany</p> <p>20 for these transactions?</p> <p>21 A. Yeah.</p> <p>22 MR. KEOUGH: Objection.</p> <p>23 A. This has been also confirmed by</p> <p>24 O.W..</p> <p>25 Q. It's signed and stamped by O.W.</p>
<p style="text-align: right;">Page 139</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 Q. Did Hapag-Lloyd ever advise U.S.</p> <p>3 Oil or O'Rourke Marine that O.W. Germany was</p> <p>4 acting as an agent of Hapag-Lloyd?</p> <p>5 A. No.</p> <p>6 Q. Let's take a look at Exhibit H 1</p> <p>7 which is attached to your declaration toward the</p> <p>8 back. I would also like you to take a look at</p> <p>9 Exhibit 3, the third page of Exhibit 3 which is</p> <p>10 Bates stamped USOT 000103 through 107. I want</p> <p>11 you to compare these two.</p> <p>12 It seems like we have two sets of</p> <p>13 terms and conditions used by Hapag-Lloyd. The</p> <p>14 version attached to Exhibit 3 appears to be</p> <p>15 3 pages long, and the version appearing at</p> <p>16 Exhibit H 1 of your declaration is 5 pages long.</p> <p>17 Do you understand what the</p> <p>18 difference is between these two versions?</p> <p>19 A. The first version here which was</p> <p>20 dated 2006, this is the version we were</p> <p>21 discussing earlier today, which has been always</p> <p>22 mentioned by O.W. as the terms and conditions of</p> <p>23 2007.</p> <p>24 Q. And that's the version attached as</p> <p>25 Exhibit H 1 to your declaration?</p>	<p style="text-align: right;">Page 141</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 Germany?</p> <p>3 A. Yeah, but it has been also</p> <p>4 confirmed by O.W. in their order.</p> <p>5 Q. In their sales order confirmations.</p> <p>6 Even though Hapag's purchase order confirmations</p> <p>7 refer to the latest edition, it's the sales</p> <p>8 order confirmation and O.W. Germany's</p> <p>9 identification of the 2006 version that apply?</p> <p>10 A. Yes.</p> <p>11 MR. KEOUGH: Objection.</p> <p>12 Q. Correct me if I'm wrong, but I</p> <p>13 believe you testified earlier that Hapag did not</p> <p>14 control O.W. Germany's selection of a physical</p> <p>15 supplier or a subcontractor for the purchase of</p> <p>16 a bunker fuel that had been supplied to Hapag?</p> <p>17 MR. KEOUGH: Objection.</p> <p>18 A. This is not our business.</p> <p>19 Q. So Hapag did not instruct O.W.</p> <p>20 Germany to use certain physical suppliers at</p> <p>21 various ports?</p> <p>22 A. No.</p> <p>23 MR. KEOUGH: Objection.</p> <p>24 MR. HEILIG: Let's take a 3-minute</p> <p>25 break and mark some exhibits.</p>

36 (Pages 138 to 141)

Page 142	Page 144
<p>1 Norbert Kock (1-19-16)</p> <p>2 (Kock Exhibit 48, Document Bates</p> <p>3 stamped HPL-USOT 154 through 159, marked for</p> <p>4 identification.)</p> <p>5 (Kock Exhibit 49, Agency Agreement,</p> <p>6 Bates stamped HPL-USOT 285 through 309, marked</p> <p>7 for identification.)</p> <p>8 (Kock Exhibit 50, Document Bates</p> <p>9 stamped HPL-USOT 160 through 162, marked for</p> <p>10 identification.)</p> <p>11 (Kock Exhibit 51, Document Bates</p> <p>12 stamped OWG-9949-230 through 233, marked for</p> <p>13 identification.)</p> <p>14 Q. Earlier we walked through various</p> <p>15 documents relating to the supply of bunkers to</p> <p>16 the SANTA ROBERTA. I just want to go back</p> <p>17 through those as quickly as possible and look at</p> <p>18 some of the previously marked exhibits for</p> <p>19 clarification purposes, and also to look at some</p> <p>20 new exhibits. Like I said, I will try to go</p> <p>21 through them as quickly as possible so that I'm</p> <p>22 not rehashing the same issues.</p> <p>23 I believe you testified earlier,</p> <p>24 and correct me if I'm wrong, that these</p> <p>25 transactions essentially transpired in the same</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 because those containers have a specific weight.</p> <p>3 So the stowage planner needs to</p> <p>4 know that there might be fuel oil coming, that's</p> <p>5 the reason in this message here the vessel was</p> <p>6 sending to the stowage guys.</p> <p>7 Q. So essentially --</p> <p>8 A. To get reconfirmed is it okay for</p> <p>9 you.</p> <p>10 Q. It's replanning, it's looking ahead</p> <p>11 to what will happen in the future?</p> <p>12 A. Yes.</p> <p>13 Q. If we look at Exhibit 5, the</p> <p>14 document page 135 and the reverse side which is</p> <p>15 136, this is the email from the vessel with the</p> <p>16 actual requisition form, correct?</p> <p>17 A. Yes.</p> <p>18 Q. Does the master of a Hapag vessel</p> <p>19 ever communicate directly with the physical</p> <p>20 supplier or trader?</p> <p>21 A. No.</p> <p>22 MR. KEOUGH: Objection.</p> <p>23 Q. Does the master have authority from</p> <p>24 Hapag to do so?</p> <p>25 A. No.</p>
Page 143	Page 145
<p>1 Norbert Kock (1-19-16)</p> <p>2 manner. That the procedure of the requisition,</p> <p>3 the soliciting bids, the nomination, the</p> <p>4 exchange of order confirmations and the</p> <p>5 invoicing were all essentially the same, is that</p> <p>6 correct?</p> <p>7 A. Yes.</p> <p>8 Q. Let's first look at Exhibit</p> <p>9 Number 4, an email from the vessel. I believe</p> <p>10 you said that this is essentially, to use an</p> <p>11 American idiomatic expression, it's essentially</p> <p>12 a heads-up. It's just a notification from the</p> <p>13 vessel saying at some point in the near future</p> <p>14 we're going to issue a requisition form for</p> <p>15 bunkers?</p> <p>16 A. Yes. Our procedure says before a</p> <p>17 vessel is raising a bunker requisition to our</p> <p>18 department, they have to recheck that</p> <p>19 requisition with the local stowage planner,</p> <p>20 because bringing 3,000 metric tons of fuel oil</p> <p>21 onboard of the vessel has an impact to the</p> <p>22 vessel's operation, and this has to be</p> <p>23 coordinated also with the stowage center not to</p> <p>24 get in conflict with coming container freight in</p> <p>25 that port or leaving container freight onboard</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 MR. KEOUGH: Objection.</p> <p>3 Q. So then the master doesn't have any</p> <p>4 authority to either negotiate or alter the terms</p> <p>5 of a purchase contract that Hapag has entered</p> <p>6 into with a physical supplier or trader?</p> <p>7 A. No.</p> <p>8 Q. The master's role is to simply</p> <p>9 notify Hapag of what the vessel needs in terms</p> <p>10 of fuel, right?</p> <p>11 A. Right.</p> <p>12 MR. KEOUGH: Objection.</p> <p>13 Q. That's the requisition form,</p> <p>14 correct?</p> <p>15 A. Right.</p> <p>16 Q. And that form is not an order, the</p> <p>17 order comes from Hapag, correct?</p> <p>18 A. Right.</p> <p>19 Q. And the order is placed by Hapag</p> <p>20 with O.W. Germany, right?</p> <p>21 A. Right.</p> <p>22 Q. Okay. So when we get down further</p> <p>23 through the process by stamping a bunker</p> <p>24 delivery note, the master is merely confirming</p> <p>25 the receipt of fuel, right?</p>

37 (Pages 142 to 145)

<p style="text-align: right;">Page 146</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 A. Right.</p> <p>3 MR. KEOUGH: Objection to the form.</p> <p>4 Q. The master doesn't have authority</p> <p>5 to bind Hapag to the terms that are on a bunker</p> <p>6 delivery?</p> <p>7 MR. KEOUGH: Objection.</p> <p>8 A. No.</p> <p>9 Q. The master doesn't have authority</p> <p>10 to deviate from Hapag's terms and conditions</p> <p>11 which govern the purchase contract?</p> <p>12 MR. KEOUGH: Objection.</p> <p>13 A. They do not have an authorization</p> <p>14 from Hapag-Lloyd.</p> <p>15 Q. If you look at Exhibit 6. Again,</p> <p>16 this is just Hapag's confirmation email to the</p> <p>17 vessel indicating that the requisition form has</p> <p>18 been received, and that Hapag will make</p> <p>19 arrangements accordingly, correct?</p> <p>20 A. Yes.</p> <p>21 MR. KEOUGH: Objection.</p> <p>22 Q. If we look at the date on</p> <p>23 Exhibit 6. What's the date on the email?</p> <p>24 A. The date?</p> <p>25 Q. Yes.</p>	<p style="text-align: right;">Page 148</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 I believe you testified that this would be</p> <p>3 Hapag's email to the market soliciting bids to</p> <p>4 supply the SANTA ROBERTA, is that correct?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. On the reverse we have the</p> <p>7 actual inquiry form, is that right?</p> <p>8 A. Yes.</p> <p>9 Q. Do you see a paragraph about</p> <p>10 halfway down the page that begins "Please take</p> <p>11 into consideration"?</p> <p>12 A. Yes.</p> <p>13 Q. This paragraph makes reference to</p> <p>14 Hapag's terms and conditions?</p> <p>15 A. That's true.</p> <p>16 Q. And it's the latest edition?</p> <p>17 A. That's true.</p> <p>18 Q. So would this alter in any way your</p> <p>19 earlier testimony about which version of Hapag's</p> <p>20 terms applies to its contracts with O.W.</p> <p>21 Germany?</p> <p>22 MR. MALONEY: Objection to the</p> <p>23 form.</p> <p>24 A. This is a standard text here, and</p> <p>25 what we can see in O.W.'s order confirmation is</p>
<p style="text-align: right;">Page 147</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 A. The date was September 30, 2014.</p> <p>3 Q. What's the date on the email with</p> <p>4 the requisition form from the vessel?</p> <p>5 A. This was September 26th. This was</p> <p>6 sent on a Friday and has been answered on a</p> <p>7 Tuesday. There was a weekend in between.</p> <p>8 Q. Are there individuals in your team</p> <p>9 in the office over the weekend who would be I</p> <p>10 guess conducting the evaluation process?</p> <p>11 A. No.</p> <p>12 Q. So then on Monday morning, for</p> <p>13 example, they would have looked on the valuation</p> <p>14 process that we discussed earlier?</p> <p>15 A. Yes.</p> <p>16 Q. And by Tuesday they would get back</p> <p>17 to the vessel?</p> <p>18 A. Yeah. I would have been expected</p> <p>19 to do it on Monday orally, but there might be a</p> <p>20 reason that they couldn't do it so they did it</p> <p>21 on a Tuesday morning.</p> <p>22 Q. Please do not admonish your</p> <p>23 subordinates based on what we've said today.</p> <p>24 Look at Exhibit 7. The first page,</p> <p>25 document number 139 and the reverse side, 140.</p>	<p style="text-align: right;">Page 149</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 that they were referring to the terms and</p> <p>3 conditions from 2006, and we accepted that.</p> <p>4 Q. Okay.</p> <p>5 A. Because we did not protest.</p> <p>6 Q. So in other words, this doesn't</p> <p>7 change your earlier testimony?</p> <p>8 A. No.</p> <p>9 Q. Okay. Let's take a look at</p> <p>10 Exhibits 8 and 9. I just want you to look at</p> <p>11 the first page of Exhibit 8 and Exhibit 9. I</p> <p>12 believe Exhibit 8 is one where we've put several</p> <p>13 documents together that perhaps should not have</p> <p>14 been together, but that's all right.</p> <p>15 I believe you testified earlier</p> <p>16 that what we have in Exhibit 8 is one of the</p> <p>17 offers from Peninsula Petroleum, which is</p> <p>18 another trader, is that correct?</p> <p>19 A. Right.</p> <p>20 Q. Exhibit 9 we have the typical</p> <p>21 supply by O.W. Germany with the specifications</p> <p>22 for the fuel?</p> <p>23 A. Right.</p> <p>24 Q. If you look at the third page of</p> <p>25 Exhibit 8. Am I correct that you described this</p>

<p style="text-align: right;">Page 150</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 earlier as a price comparison?</p> <p>3 A. Yes.</p> <p>4 Q. Essentially, this shows</p> <p>5 Hapag-Lloyd's process of evaluating the bids or</p> <p>6 the offers that it received from various</p> <p>7 traders?</p> <p>8 A. That's true.</p> <p>9 Q. One of which would be O.W. Bunker</p> <p>10 Germany?</p> <p>11 A. Yes.</p> <p>12 Q. Is this an internal document?</p> <p>13 A. Yes.</p> <p>14 Q. So this would not have been shared</p> <p>15 with O.W. Germany?</p> <p>16 A. No.</p> <p>17 Q. And would not have been shared with</p> <p>18 the physical suppliers?</p> <p>19 A. Or anybody else.</p> <p>20 Q. Anybody else?</p> <p>21 A. Just internally, and if there is an</p> <p>22 audit going on.</p> <p>23 Q. If we look at the furthest column</p> <p>24 to the left we have the names of the various</p> <p>25 traders that issued offers to Hapag-Lloyd, is</p>	<p style="text-align: right;">Page 152</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 presumably per metric ton, and O.W. Bunker's</p> <p>3 first offer was 554 per metric ton?</p> <p>4 A. You have to be careful with the</p> <p>5 last column here which is stating which port is</p> <p>6 offered. So could be please repeat your</p> <p>7 question?</p> <p>8 Q. I'm not sure I had a pending</p> <p>9 question. It just appears that the offer stated</p> <p>10 for GEFO is a dollar less than O.W. Bunker</p> <p>11 Germany in that first column entitled "Offer"?</p> <p>12 A. That's true.</p> <p>13 Q. If I understand your earlier</p> <p>14 testimony, the lowest price did not necessarily</p> <p>15 win the nomination because the fuel quality</p> <p>16 might be better?</p> <p>17 A. Yes.</p> <p>18 Q. And that's a factor that would be</p> <p>19 taken into consideration which Hapag?</p> <p>20 A. The energy contents, right.</p> <p>21 Q. The energy contents, right. If we</p> <p>22 go over three columns it's again entitled "One</p> <p>23 offer," but it appears to be for the marine</p> <p>24 diesel oil header column?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 151</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 that correct?</p> <p>3 A. Right.</p> <p>4 Q. Remind me, did you identify GF or</p> <p>5 GEFO before?</p> <p>6 A. Yes.</p> <p>7 Q. And who is that?</p> <p>8 A. This is a German-based or a</p> <p>9 Hamburg-based trader we are using from time to</p> <p>10 time.</p> <p>11 Q. So if we look at the next column to</p> <p>12 the right, number 1, offer, we see that -- how</p> <p>13 do you pronounce it?</p> <p>14 A. GEFO is the abbreviation for</p> <p>15 Gesellschaft transport.</p> <p>16 THE INTERPRETER: Society for oil</p> <p>17 transportation.</p> <p>18 A. This is a tanker owner operating in</p> <p>19 the Baltic mainly and the North Sea coast area,</p> <p>20 owning tankers and operate them, and having a</p> <p>21 fuel oil purchasing department which were grown</p> <p>22 into also a trading department offering their</p> <p>23 services to external other shipowners.</p> <p>24 Q. Okay. So it appears from this</p> <p>25 document that GEFO's second offer was 553</p>	<p style="text-align: right;">Page 153</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 Q. We see GEFO's first offer was</p> <p>3 better than O.W. Bunker Germany, then O.W.</p> <p>4 Bunker Germany made a second bid at a lower</p> <p>5 price, is that correct?</p> <p>6 A. Where are you at the moment?</p> <p>7 Q. Under the MDO O.W. Bunker 2 TE, it</p> <p>8 looks like the price went from 895 to 885?</p> <p>9 A. Yes.</p> <p>10 Q. So at some point O.W. Bunker</p> <p>11 Germany improved its offer to the MDO. Do I</p> <p>12 understand correctly that the negotiation of</p> <p>13 pricing would have taken place likely over the</p> <p>14 phone?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Again, this is just an</p> <p>17 internal document that would not have been</p> <p>18 shared?</p> <p>19 A. That's correct.</p> <p>20 Q. Let's take a look at a document</p> <p>21 that's been marked as Exhibit 48, this is Bates</p> <p>22 number HPL-USOT 154 through 159.</p> <p>23 Do you recall if you looked at an</p> <p>24 email similar to this earlier on today?</p> <p>25 A. Yes.</p>

39 (Pages 150 to 153)

Page 154	Page 156
<p>1 Norbert Kock (1-19-16)</p> <p>2 Q. I believe we discussed a bit about</p> <p>3 Norton Lilly and Oiltest, is that correct?</p> <p>4 A. Yes.</p> <p>5 Q. If I understand correctly, Norton</p> <p>6 Lilly was the local agent at the port?</p> <p>7 A. That's right.</p> <p>8 Q. And Oiltest was the surveyor</p> <p>9 appointed to essentially run quality control on</p> <p>10 the fuel specs?</p> <p>11 A. Yes, and quality.</p> <p>12 Q. What would be the purpose of the</p> <p>13 email at pages 154 to 155?</p> <p>14 A. To inform the local agent, the</p> <p>15 vessel, the stowage planners, as well as the</p> <p>16 attending surveyor about this order we did.</p> <p>17 Q. So it's really logistics and</p> <p>18 coordinating the physical supplier at the port?</p> <p>19 A. It's only logistics.</p> <p>20 Q. Neither Norton Lilly nor Oiltest</p> <p>21 plays any part in the negotiation or the</p> <p>22 formation of a contract for the purchase of fuel</p> <p>23 oil?</p> <p>24 A. No.</p> <p>25 Q. Do you know whether Hapag's</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 whether that was a preexisting stamp or if you</p> <p>3 had done it.</p> <p>4 MR. FERNANDEZ: We had done it.</p> <p>5 MR. HEILIG: There's no testimony</p> <p>6 to mark as confidential.</p> <p>7 Q. Earlier we discussed a bit about</p> <p>8 what would happen if a claim were to arise in a</p> <p>9 particular transaction.</p> <p>10 Would a claim arise based on the</p> <p>11 survey conducted by Oiltest, for example?</p> <p>12 A. For example, yes.</p> <p>13 Q. Let's take a look at a document</p> <p>14 that's been marked as Exhibit Number 50, this is</p> <p>15 Bates number HPL-USOT 160 through 162. Do you</p> <p>16 recognize these documents?</p> <p>17 A. Yes.</p> <p>18 Q. Page 161, is this a fuel survey</p> <p>19 report submitted by Oiltest to Hapag-Lloyd for</p> <p>20 the SANTA ROBERTA transaction?</p> <p>21 A. Yes.</p> <p>22 Q. So the fuel surveyor would have</p> <p>23 completed the document on page 161?</p> <p>24 A. Yes.</p> <p>25 Q. Page 162 we have a photograph which</p>
Page 155	Page 157
<p>1 Norbert Kock (1-19-16)</p> <p>2 relationship with Norton Lilly is governed by</p> <p>3 written contracts?</p> <p>4 A. I'm not involved in that business,</p> <p>5 but there must be a contract onboard, otherwise</p> <p>6 they won't work for us.</p> <p>7 Q. Let's look at a document that has</p> <p>8 been marked as Exhibit 49, Bates stamps HPL-USOT</p> <p>9 285 through 309.</p> <p>10 Sir, have you seen this document</p> <p>11 before today?</p> <p>12 A. No.</p> <p>13 Q. I take it then it's fair to say you</p> <p>14 did not play any part in drafting or negotiating</p> <p>15 this document?</p> <p>16 A. That's correct.</p> <p>17 Q. And you're not familiar with its</p> <p>18 terms?</p> <p>19 A. No.</p> <p>20 Q. Well then we'll move on.</p> <p>21 MR. FERNANDEZ: Just for the</p> <p>22 record, what you marked as Exhibit 49 has been</p> <p>23 marked confidential pursuant to the</p> <p>24 confidentiality agreement.</p> <p>25 MR. HEILIG: They should have asked</p>	<p>1 Norbert Kock (1-19-16)</p> <p>2 appears to be a photograph of the samples taken?</p> <p>3 A. That's right.</p> <p>4 Q. From the fuel?</p> <p>5 A. Yes.</p> <p>6 Q. Does Hapag-Lloyd require a</p> <p>7 photograph of the samples to I guess demonstrate</p> <p>8 their existence?</p> <p>9 A. Their integrity, right.</p> <p>10 Q. Would these documents be the type</p> <p>11 of documents to notify Hapag of a potential</p> <p>12 claim based on the specifications of the fuel?</p> <p>13 A. Yes.</p> <p>14 Q. If a claim were presented by</p> <p>15 Hapag-Lloyd, I believe you testified that it</p> <p>16 would be presented to O.W. Germany?</p> <p>17 A. Yes.</p> <p>18 Q. And to no one else?</p> <p>19 A. Right.</p> <p>20 Q. And Hapag-Lloyd didn't care what</p> <p>21 happened downstream of O.W. Germany with respect</p> <p>22 to those claims, correct?</p> <p>23 A. That's right.</p> <p>24 Q. All right. And if it were</p> <p>25 determined or agreed by the parties that the</p>

40 (Pages 154 to 157)

<p style="text-align: right;">Page 158</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 claim was valid, there would be an adjustment in</p> <p>3 price to O.W. Germany's invoice to Hapag-Lloyd?</p> <p>4 A. That's right.</p> <p>5 Q. Irrespective of whether or not</p> <p>6 there would be a corresponding reduction or</p> <p>7 adjustment in price of the physical supplier's</p> <p>8 invoice to O.W.?</p> <p>9 A. We have no relation to the physical</p> <p>10 supplier. We are just dealing with O.W.</p> <p>11 Germany.</p> <p>12 Q. This all stems from that issue in</p> <p>13 the '90s where you dealt with the broker who</p> <p>14 simply washed his hands with the situation, and</p> <p>15 left Hapag with the recourse?</p> <p>16 A. Yes.</p> <p>17 Q. Let's take a look at Exhibit 14. I</p> <p>18 believe this was an email from the vessel</p> <p>19 attaching the bunker delivery note that was sent</p> <p>20 directly to Hapag?</p> <p>21 A. Yes.</p> <p>22 Q. Would Hapag have also received a</p> <p>23 copy of the bunker delivery note from O.W.</p> <p>24 Germany at some point?</p> <p>25 A. It could have been done at some</p>	<p style="text-align: right;">Page 160</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 Germany's invoice to Hapag-Lloyd for the SANTA</p> <p>3 ROBERTA transaction, correct?</p> <p>4 A. That's right.</p> <p>5 Q. This one is not stamped because it</p> <p>6 has not yet been entered into Hapag's accounting</p> <p>7 system?</p> <p>8 A. That's right.</p> <p>9 Q. Looking earlier we looked at the</p> <p>10 stamped version of the invoice?</p> <p>11 A. Yes.</p> <p>12 Q. And it would have been entered in</p> <p>13 the system?</p> <p>14 A. This is depending on where the</p> <p>15 copies are coming from. If the copies are</p> <p>16 coming out of our system and they had been</p> <p>17 booked into the system there is a stamp. In</p> <p>18 this case here, this is communication from O.W.</p> <p>19 Bunker to our bookkeeping department, and at</p> <p>20 that time the invoice has not been booked.</p> <p>21 Q. The stamp is Hapag's stamp?</p> <p>22 A. Yes.</p> <p>23 Q. Do you know whether Hapag would</p> <p>24 have stamped the copy received by email or would</p> <p>25 Hapag have waited for the original to arrive by</p>
<p style="text-align: right;">Page 159</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 point together with the invoice.</p> <p>3 Q. Okay. Let's take a look at a</p> <p>4 document that has been marked as Exhibit 51,</p> <p>5 Bates number OWG-9949-230 through 233.</p> <p>6 The email on page 230 is in German</p> <p>7 so I will have to rely on you to translate, or</p> <p>8 our trusted translator. Can you describe this</p> <p>9 email for me?</p> <p>10 A. Yeah. This is a message from</p> <p>11 Victoria Bohn who's an administrative worker at</p> <p>12 O.W. at that time addressing this email to</p> <p>13 Marion Sakowski, who is a manager in our</p> <p>14 accounting department saying hello Frau Sakowski</p> <p>15 or hello Mrs. Sakowski, attached you receive</p> <p>16 invoice and bunker delivery note for the</p> <p>17 bunkering of M/V, Motor Vessel SANTA ROBERTA in</p> <p>18 Tacoma on October 9, 2014. The original will</p> <p>19 follow per courier.</p> <p>20 Q. So Hapag would receive copies of</p> <p>21 the bunker delivery note and the invoice and the</p> <p>22 original by mail?</p> <p>23 A. Yes.</p> <p>24 Q. If we look at the third page,</p> <p>25 document number 232, we have a copy of O.W.</p>	<p style="text-align: right;">Page 161</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 courier?</p> <p>3 A. At that time the accounting</p> <p>4 department was not allowed to process invoices</p> <p>5 coming by email. The local taxing authorities</p> <p>6 in German were demanding us just to process</p> <p>7 original invoices received and not copies.</p> <p>8 Q. So it's fair to assume the stamped</p> <p>9 version we looked at earlier was the hard copy</p> <p>10 received by Hapag-Lloyd?</p> <p>11 A. Yes.</p> <p>12 Q. Let's take a look at Exhibit 15.</p> <p>13 Just remind me again what the German word</p> <p>14 translates to?</p> <p>15 A. This is the payment notice that</p> <p>16 there is money in the pipeline.</p> <p>17 Q. We looked earlier and saw that the</p> <p>18 SANTA ROBERTA is identified on this document?</p> <p>19 A. Yes.</p> <p>20 Q. How would Hapag-Lloyd make payment</p> <p>21 to O.W. Germany, physical payment; was it by</p> <p>22 check or wire payment?</p> <p>23 A. Wire payment.</p> <p>24 Q. Would this document be issued</p> <p>25 before or after the actual wire payment was</p>

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<p style="text-align: right;">Page 198</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 MR. FERNANDEZ: Objection.</p> <p>3 A. It should have been Captain Grundel</p> <p>4 if he was onboard at that time, yes.</p> <p>5 Q. According to the crew list he was</p> <p>6 the captain?</p> <p>7 A. Yes.</p> <p>8 Q. At that time, right?</p> <p>9 A. Yes.</p> <p>10 MR. FERNANDEZ: Objection.</p> <p>11 Q. Is the SOFIA EXPRESS still owned by</p> <p>12 Hapag-Lloyd?</p> <p>13 A. Yes.</p> <p>14 Q. Is the VIENNA EXPRESS still owned</p> <p>15 by Hapag-Lloyd?</p> <p>16 A. Yes.</p> <p>17 Q. I direct your attention to</p> <p>18 Exhibit 32, to the second page which is marked</p> <p>19 HPL-USOT 00198. Would you look at the second</p> <p>20 page please, sir?</p> <p>21 Is that the bunker delivery receipt</p> <p>22 for the VIENNA EXPRESS?</p> <p>23 A. Yes.</p> <p>24 Q. Is it your understanding that the</p> <p>25 chief engineer of the VIENNA EXPRESS signed that</p>	<p style="text-align: right;">Page 200</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 Q. I'm showing you what's been</p> <p>3 produced by your counsel as HPL-USOT page 89,</p> <p>4 which appears to be a crew list for the VIENNA</p> <p>5 EXPRESS, which I'm placing before you.</p> <p>6 Do you recognize that the name of</p> <p>7 the chief engineer depicted on that page -- do</p> <p>8 you recognize whether the name of the chief</p> <p>9 engineer is depicted on that page?</p> <p>10 A. It looks like the chief engineer,</p> <p>11 Marek Sojda, was the responsible chief engineer</p> <p>12 for the vessel at that time, and the signature</p> <p>13 looks like Sojda. I would agree.</p> <p>14 Q. Other than the document that you've</p> <p>15 reviewed in Germany and here, the testimony that</p> <p>16 you described, did you review any diaries or</p> <p>17 calendar that you may have kept in October of</p> <p>18 2014?</p> <p>19 A. No.</p> <p>20 Q. In preparation for your testimony</p> <p>21 today?</p> <p>22 A. No.</p> <p>23 Q. At the time, in October of 2014,</p> <p>24 did you have a practice of maintaining a</p> <p>25 notebook or a diary of the work that was going</p>
<p style="text-align: right;">Page 199</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 bunker delivery receipt?</p> <p>3 MR. FERNANDEZ: Objection.</p> <p>4 A. Yeah, it has been signed by the</p> <p>5 chief engineer.</p> <p>6 Q. And the chief engineer signed that</p> <p>7 on behalf of the vessel?</p> <p>8 MR. FERNANDEZ: Objection.</p> <p>9 Q. Using the stamp marked there?</p> <p>10 MR. FERNANDEZ: Objection.</p> <p>11 MR. MALONEY: Objection.</p> <p>12 MR. HEILIG: Objection.</p> <p>13 A. He signed it on behalf of</p> <p>14 Hapag-Lloyd.</p> <p>15 Q. And it bears the stamp also on the</p> <p>16 right side, Hapag-Lloyd VIENNA EXPRESS, do you</p> <p>17 see that?</p> <p>18 A. Yes.</p> <p>19 Q. In the course of your duties as the</p> <p>20 director of purchasing, you're use to seeing</p> <p>21 stamps of the vessel and Hapag-Lloyd on these</p> <p>22 bunker delivery receipts?</p> <p>23 MR. FERNANDEZ: Objection.</p> <p>24 A. When it was a Hapag-Lloyd vessel,</p> <p>25 yes.</p>	<p style="text-align: right;">Page 201</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 on in your department?</p> <p>3 A. No.</p> <p>4 Q. In the course of your experience as</p> <p>5 the director of purchasing for Hapag-Lloyd, have</p> <p>6 you come to learn that a supplier of fuel to a</p> <p>7 vessel, a Hapag-Lloyd vessel, may have a right</p> <p>8 to assert a lien against the vessel itself?</p> <p>9 MR. FERNANDEZ: Objection.</p> <p>10 MR. HEILIG: Objection.</p> <p>11 MR. MALONEY: Objection.</p> <p>12 A. Maybe a seller, but a supplier, no.</p> <p>13 Q. You've developed some familiarity</p> <p>14 that a seller might have a lien against a</p> <p>15 Hapag-Lloyd vessel in some circumstances, is</p> <p>16 that fair to say?</p> <p>17 MR. FERNANDEZ: Objection.</p> <p>18 A. I think this is part also of our</p> <p>19 terms and conditions.</p> <p>20 Q. Prior to the O.W. bankruptcy, did</p> <p>21 you have any experience with any seller or</p> <p>22 supplier claiming that they had a lien against a</p> <p>23 Hapag-Lloyd vessel for non-payment?</p> <p>24 A. No.</p> <p>25 MR. HEILIG: Objection.</p>

<p style="text-align: right;">Page 210</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 Lilly to assist you with?</p> <p>3 MR. FERNANDEZ: Objection to the</p> <p>4 form.</p> <p>5 MR. MALONEY: Objection to the</p> <p>6 form.</p> <p>7 MR. HEILIG: Objection.</p> <p>8 A. Yes.</p> <p>9 Q. Would you look at paragraph 19. Do</p> <p>10 you see at the end of the second sentence in</p> <p>11 that paragraph you say:</p> <p>12 "Additionally, execution of the</p> <p>13 bunker delivery receipt simply acknowledged</p> <p>14 receipt of the fuel as to volume and delivery</p> <p>15 temperature only and did not ratify performance</p> <p>16 of USOT concerning delivery of fuel."</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. What did you mean by "ratify</p> <p>20 performance of USOT concerning delivery of</p> <p>21 fuel"?</p> <p>22 A. That we just confirm the quality,</p> <p>23 correction, the volume, the delivered volume and</p> <p>24 the delivered temperature, and that the final</p> <p>25 metric tons which will be invoiced later by the</p>	<p style="text-align: right;">Page 212</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 A. Yes, it contains much more</p> <p>3 paperwork.</p> <p>4 Q. Than Exhibit 17?</p> <p>5 MR. FERNANDEZ: Objection to the</p> <p>6 form.</p> <p>7 Q. Does it contain the additional</p> <p>8 pages of the time charter produced by your</p> <p>9 attorneys, which are omitted from Exhibit 17?</p> <p>10 A. I don't know.</p> <p>11 MR. FERNANDEZ: Objection.</p> <p>12 Q. Would you look at the document</p> <p>13 please?</p> <p>14 MR. DEHART: Can we note on the</p> <p>15 record that this document has been designated as</p> <p>16 confidential?</p> <p>17 MR. KEOUGH: Yes.</p> <p>18 A. That's a lot of paperwork in behind</p> <p>19 stating clauses to the Charter Party.</p> <p>20 MR. KEOUGH: Off the record.</p> <p>21 (Off the record)</p> <p>22 Q. Is it correct that what's been</p> <p>23 marked as Exhibit 53 contains the Bates numbers</p> <p>24 HPL-USOT 201 through 241, is that right?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 211</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 seller, O.W., will be calculated based on the</p> <p>3 analyzed product entity which comes later.</p> <p>4 Q. That quality analysis that you</p> <p>5 described?</p> <p>6 A. Yes.</p> <p>7 MR. KEOUGH: Let's mark this as</p> <p>8 Exhibit 53 and 54.</p> <p>9 (Kock Exhibit 53, Time Charter with</p> <p>10 attachments, Bates stamped HPL-USOT 201 through</p> <p>11 241, marked for identification.)</p> <p>12 (Kock Exhibit 54, Time Charter,</p> <p>13 Bates stamped HPL-USOT 242 through 284, marked</p> <p>14 for identification.)</p> <p>15 Q. I'm showing you what's been marked</p> <p>16 as Exhibit 53. Do you recognize that as the</p> <p>17 time charter produced by your counsel in the</p> <p>18 case that is similar to Exhibit 17, but it</p> <p>19 contains the riders and additional pages that</p> <p>20 are lacking from Exhibit 17?</p> <p>21 A. Our department is not involved in</p> <p>22 negotiating charter parties.</p> <p>23 Q. I'm just asking you if you</p> <p>24 recognize this exhibit as a more complete</p> <p>25 document?</p>	<p style="text-align: right;">Page 213</p> <p>1 Norbert Kock (1-19-16)</p> <p>2 Q. You understand this is a document</p> <p>3 produced by your attorneys in this case for</p> <p>4 Hapag-Lloyd?</p> <p>5 A. No.</p> <p>6 MR. KEOUGH: I'll ask counsel if</p> <p>7 he's prepared to stipulate to that effect?</p> <p>8 MR. FERNANDEZ: I'll take it under</p> <p>9 advisement.</p> <p>10 MR. KEOUGH: Thank you.</p> <p>11 Q. Would you please place Exhibit 54</p> <p>12 in front of the witness. Showing you that</p> <p>13 document, do you recognize that as a copy of a</p> <p>14 time charter produced by your counsel, which</p> <p>15 bears the Bates numbers HPL-USOT 242 through</p> <p>16 284?</p> <p>17 A. But I can't identify who was issued</p> <p>18 this document here, because it's not my</p> <p>19 business.</p> <p>20 MR. KEOUGH: That appears to be a</p> <p>21 time charter for the SANTA ROBERTA. Exhibit 53</p> <p>22 was a time charter for the SEASpan HAMBURG.</p> <p>23 MR. FERNANDEZ: Also marked</p> <p>24 confidential for purposes of this litigation.</p> <p>25 MR. KEOUGH: Yes, I take it it is.</p>

54 (Pages 210 to 213)